TEXAS REGISTER

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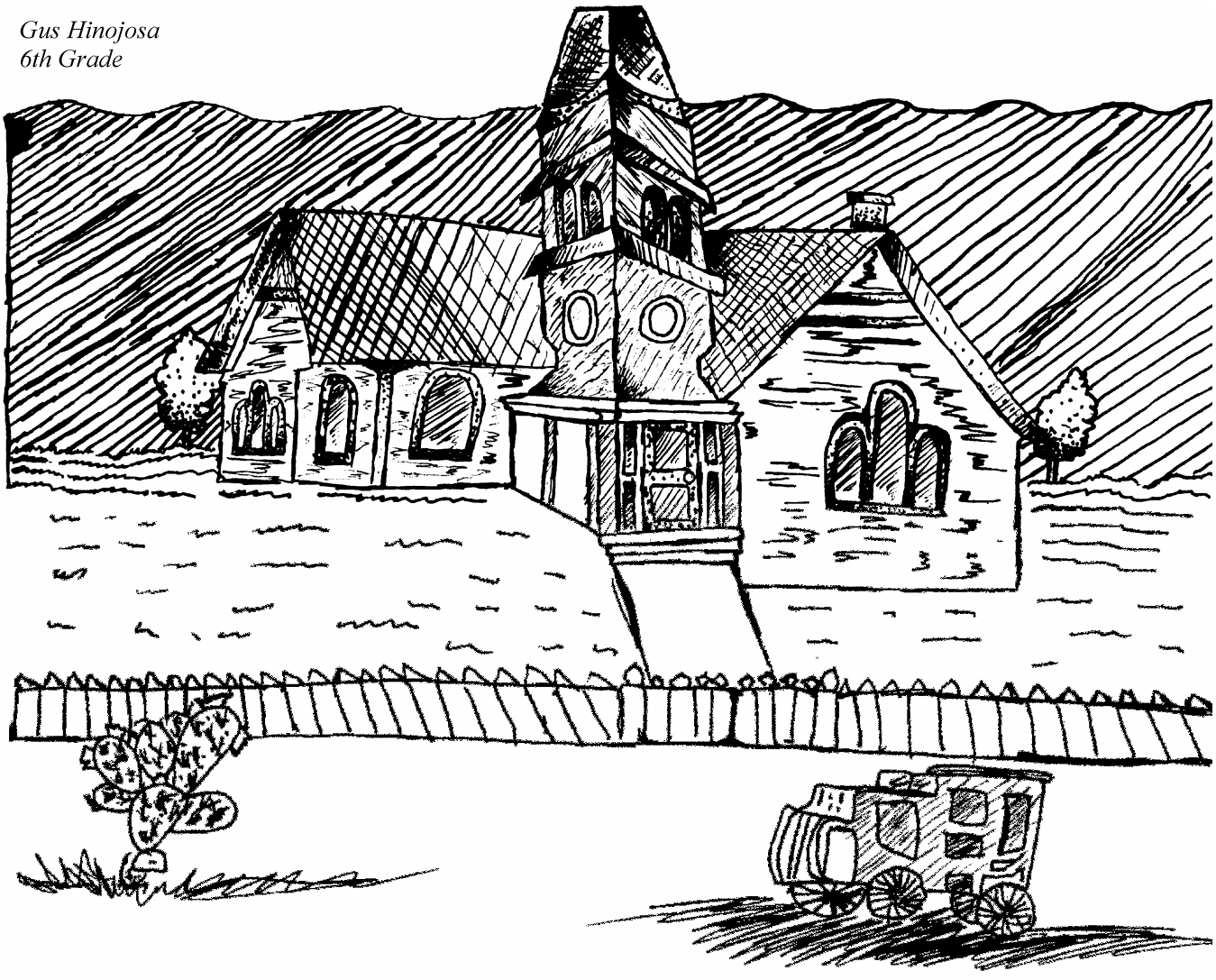
Gus Hinojosa
6th Grade



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us
register@sos.state.tx.us

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ADOPTED RULES

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IN ADDITION

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for August 7, 2007

Designating Wilson Benjamin Fry as Presiding Officer of the Texas State Board of Pharmacy for a term at the pleasure of the Governor. Mr. Fry is replacing Mr. Woodrow Michael Brimberry of Cedar Park as presiding officer. Mr. Brimberry will continue to serve on the board.

Appointments for August 9, 2007

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2011, Felix Koo, M.D., Ph.D. of McAllen (replacing Stephen D. Benold, M.D. of Georgetown whose term expired).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2013, Michael Mitchell, DO of Henrietta (Dr. Mitchell is being reappointed).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2013, Teralea Jones of Beeville (replacing Dwight Deter of El Paso whose term expired).

Appointed to the Texas Physician Assistant Board for a term to expire February 1, 2013, Abelino Reyna of Waco (replacing Timothy Webb of Houston whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Jose Riojas of El Paso (replacing Alan Abbott of El Paso whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Kirk Calhoun of Tyler (replacing Sada Cumber of Austin whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Bill Holmes of El Paso (replacing Phil Drayer of Dallas whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Henry Venta of Beaumont, (replacing Pike Powers of Austin whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Aruna Viswanathan of Houston (replacing Thomas Caskey of Houston whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Judy Hawley of Portland (replacing Pamela Eibeck of Lubbock whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Jack Gill of Houston (replacing Walter Ulrich of Pearland whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Elsa Murano of Bryan (replacing Bernard Paulson of Corpus Christi whose term expired).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, David Spencer of San Antonio (Mr. Spencer is being reappointed).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Grant Billingsley of Midland (Mr. Billingsley is being reappointed).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Cesar Maldonado of Harlingen (Mr. Maldonado is being reappointed).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Bill Sproull of Richardson (Mr. Sproull is being reappointed).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Bob Pearson of Austin (Mr. Pearson is being reappointed).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Madison Pedigo of Lucas (Mr. Pedigo is being reappointed).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, Gerald Cagle of Fort Worth (Mr. Cagle is being reappointed).

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, William Morrow of Spring Branch (Mr. Morrow is being reappointed). Mr. Morrow will serve as Presiding Officer of the Board.

Appointment for August 14, 2007

Designating Victor Hugo Gonzalez of McAllen as Presiding Officer of the Texas Diabetes Council for a term at the pleasure of the Governor. Dr. Gonzales is replacing Dr. Lawrence B. Harkless of San Antonio as presiding officer.

Appointment for August 15, 2007

Appointed as the Inspector General for Health and Human Services for a term to expire February 1, 2008, Bart Bevers of Round Rock. Mr. Bevers is replacing Brian Glenn Flood of Austin whose term expired.

Rick Perry, Governor

TRD-200703705

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinion

RQ-0613-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether an individual may simultaneously serve on both the Village of Wimberley City Council and on the board of directors of the Wimberley Water Supply Corporation (RQ-0613-GA)

Briefs requested by September 21, 2007

For further information, please access the Web site at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200703817
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 22, 2007

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Opinion

Opinion No. GA-0564

The Honorable M. Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether 18 U.S.C. §926C preempts portions of Texas Occupations Code section 1701.357 (RQ-0572-GA

S U M M A R Y

A federal statute, 18 U.S.C. §926C, which authorizes a qualified retired law enforcement officer to carry a concealed firearm if the officer also carries proof that he or she has demonstrated weapons proficiency under state law, does not preempt Texas Occupations Code section 1701.357, which provides a means by which some honorably retired peace officers may obtain the proof required by federal law. Those retired peace officers who cannot obtain certification under section 1701.357 may do so under section 411.199 of the Texas Government Code and section 1701.355 of the Texas Occupations Code.

An honorably retired peace officer who is certified as proficient under Texas Occupations Code section 1701.357 must recertify on an annual basis.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200703819
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 22, 2007

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis an amendment to §157.7, relating to the denial of a license. The amendment becomes effective on September 1, 2007 because that is the effective date of the legislative changes made by SB 914. The amendments are being made so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under SB 914 which amended Texas Occupations Code Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. Thus, the amendments incorporate the legislatively mandated changes. The amendments will also be proposed simultaneously in this issue of the *Texas Register*.

The amendments are adopted on an emergency basis under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses, §1103.154, Rules Relating to Professional Conduct and §1103.508, Subchapter K, Contested Hearings.

No other code, article, or statute is affected by this emergency adoption.

§157.7. Denial of a License.

If the board denies a certification or license to an applicant under the Act, the board immediately shall give written notice of the denial to the applicant. Notice and hearings relating to denial of a license issued by the board shall be governed by the Act and by Texas Government Code Annotated, §§2001.001, et seq. In the case of an application for approval as an appraiser trainee the board shall also notify a sponsoring certified appraiser of the denial, but a sponsoring appraiser is not required to request a hearing or to be named or admitted as a party in the proceeding before the board. A hearing pursuant to this section shall be held at a place designated by the State Office of Administrative Hearings [~~board~~] and presided over by an [~~the agency's~~] administrative law judge from the State Office of Administrative Hearings who shall conduct the hearing and issue a proposal for decision [~~final decisions for the board~~]. Failure to request a hearing within 30 days of the written notice of denial waives judicial appeal, and the board determination becomes final and unappealable.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703747
Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Effective Date: September 1, 2007
Expiration Date: December 29, 2007
For further information, please call: (512) 465-3959

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SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.11

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis amendments to §157.11, relating to contested cases. These amendments become effective on September 1, 2007 because that is the effective date of the legislative changes made by SB 914. These amendments are being made so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under SB 914 which amended Texas Occupations Code Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. The amendments will also be proposed simultaneously in this issue of the *Texas Register*.

The amendments are adopted on an emergency basis under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses, §1103.154, Rules Relating to Professional Conduct and §1103.508, Subchapter K, Contested Hearings.

No other code, article, or statute is affected by this emergency adoption.

§157.11. Contested Cases; Entry of Appearance; Continuance.

(a) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance not

later than 20 days after the date of receipt of notice as provided in §12A of the Act.

(b) For the purposes of this section, a contested case shall mean any action that is referred by the board to the State Office of Administrative Hearings [~~agency's administrative law judge~~].

(c) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the State Office of Administrative Hearings [~~agency's administrative law judge~~].

(d) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing entitles the board to a continuance of the hearing in the contested case at the board's discretion for such a reasonable period of time as determined by the administrative law judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date the respondent has received notice.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703748
Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Effective Date: September 1, 2007
Expiration Date: December 29, 2007
For further information, please call: (512) 465-3959

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SUBCHAPTER C. POST HEARING

22 TAC §§157.15 - 157.18

The Texas Appraiser Licensing and Certification Board adopts on an emergency basis amendments to §157.15 and §157.18 and new rules §157.16, Exceptions and Replies and §157.17, Final Decisions and Orders. These new rules and amendments become effective on September 1, 2007 because that is the effective date of the legislative changes made by SB 914. The new rules and amendments are being made so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under SB 914 which amended Texas Occupations Code Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. Thus, the new rules and amendments incorporate the legislatively mandated changes. The new rules and amendments will also be proposed simultaneously in this issue of the *Texas Register*.

The new rules and amendments are adopted on an emergency basis under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses, §1103.154, Rules Relating to Professional Conduct a and §1103.508, Subchapter K. Contested Hearings.

No other code, article, or statute is affected by this emergency adoption.

§157.15. Decision.

(a) The administrative law judge shall serve on the parties a proposal for decision which shall contain:

(1) a statement of the administrative law judge's proposed reasons for the decision;

(2) findings of fact and conclusions of law, separately stated, that are necessary to the proposed decision.

(b) Service. When a decision is prepared, a copy of the decision shall be served by the administrative law judge on each party, the respondent's attorney of record or representative, and the board. Service of the decision shall be in accordance with Section 157.9(b) of this title (relating to Notice of Hearing).

§157.16. Exceptions and Replies.

(a) Entitlement. Any party of record who is aggrieved by the administrative law judge's decision shall have the opportunity to file exceptions to the decision within 20 days from the date of service of the decision. Replies to the exceptions may be filed by the other party within 20 days of the filing of the exception.

(b) Exceptions and replies shall be filed by the administrative law judge.

§157.17. Final Decisions and Orders.

(a) Board Action. The proposal for decision may be acted upon by the board after the expiration of 60 days after the date of service of the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be deliver or mailed to any party and to the respondent's attorney of record.

(b) Imminent Peril. If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect on a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

§157.18. Motions for Rehearing; Finality of Decisions.

(a) Filing times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by certified mail, return receipt requested, of the final decision or order made by the board [~~administrative law judge~~].

(b) - (d) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703751
Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Effective Date: September 1, 2007
Expiration Date: December 29, 2007
For further information, please call: (512) 465-3959

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners proposes emergency amendments to §371.3 regarding Fees. The changes to §371.3 are being proposed to cover the cost of the Article VIII salary increase contingency rider approved by the 80th Legislature for Article VIII agencies. The reason for the emergency is that the board's renewal period begins September 1, 2007. We must have the new fees in place in order to be able to collect the additional fees required to be appropriated the additional funds for the classified salary increase.

Hemant Makan, Executive Director, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications for state or local government as a result of adopting the section.

Mr. Makan has also determined that for each year for the first five years the rule is in effect, the public benefit anticipated as a result of adopting the changes for §371.3 will be to retain licensure and enforcement staff to ensure public safety There will be no effect on small or micro-businesses. The minimal cost to persons (i.e., licensees) who are required to comply with the change to §371.3 will be $5.00.

Comments on or about the emergency changes may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Janie.Alonzo@foot.state.tx.us.

The changes are being proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed change for §371.3 implements Texas Occupations Code, §202.153 Fees.

§371.3. Fees.

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

(1) Examination--$250 plus $39 fee for HB660 (criminal history record information)

(2) Re-Examination--$250 plus $39 fee for HB660 (criminal history record information)

(3) Temporary License--$125

(4) Extended Temporary License--$50

(5) Temporary Faculty License--$40

(6) Provisional License--$125

(7) Initial Licensing Fee--$444 [~~$439~~] plus $5 fee for HB2985

(8) Annual Renewal--$444 [~~$439~~] plus $1 fee for HB2985

(9) Renewal Penalty--as specified in Texas Occupations Code, §202.301(d).

(10) Non certified podiatric technician registration--$35

(11) Non certified podiatric technician renewal--$35

(12) Hyperbaric Oxygen [~~H.B.O.~~] Certificate--$25

(13) Nitrous Oxide Registration--$25

(14) Duplicate License--$50.

(15) Copies of Public Records--The charges to any person requesting copies of any public record of the Board will be the charge established by the appropriate state authority [~~Texas Building and Procurement Commission~~]. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

(16) Statute and Rule Notebook--provided at cost to the agency.

(17) Duplicate Certificate--$10.

(18) HB660 (criminal history record information)--$39.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703737
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective Date: September 1, 2007
Expiration Date: December 29, 2007
For further information, please call: (512) 305-7000

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

SUBCHAPTER D. PROGRAM COMPLETION

37 TAC §85.63

Pursuant to Government Code, §2001.034, the Texas Youth Commission (commission) adopts on an emergency basis new §85.63, concerning discharge of youth committed to the commission under determinate sentence orders. The new section sets forth the criteria the commission will use in making a determination as to whether or not to refer a sentenced offender to the committing juvenile court for the purpose of confinement in the Texas Department of Criminal Justice. Additionally, the new section establishes the executive director or his/her designee as the final approval authority for referrals to juvenile court and for discharges to adult parole.

This new section is adopted on an emergency basis in order to ensure that sentenced offenders whose conduct indicates that the welfare of the community requires confinement in adult prison are referred to court for transfer hearings.

The new section is adopted on an emergency basis under Human Resources Code, §61.079, which provides the commission authority to refer a child to the committing juvenile court for confinement in the Texas Department of Criminal Justice under certain conditions, and §61.084, which requires the commission to transfer a sentenced offender to the custody of the adult parole system on the 19th birthday to serve the remainder of the sentence if the youth has not already been discharged or transferred.

The adopted rule affects Human Resource Code, §61.034.

§85.63. Discharge of Sentenced Offenders.

(a) Purpose. This rule establishes the criteria for discharging sentenced offenders from the jurisdiction of the Texas Youth Commission (TYC).

(b) Applicability. This rule applies only to youth committed to TYC under determinate sentence orders. To the extent that this rule conflicts with provisions of §85.65 and §85.69 of this title, provisions of this rule are controlling.

(c) Criteria for Referral to Juvenile Court. Pursuant to §61.079, Human Resources Code, TYC may refer a youth to the committing juvenile court for approval of the youth's transfer to the Texas Department of Criminal Justice (TDCJ) for confinement if:

(1) the youth is at least 16 years of age and not yet 19 years of age; and

(2) the youth has not completed the sentence; and

(3) the youth's conduct, regardless of whether the youth was released under supervision under §61.081, Human Resources Code, indicates that the welfare of the community requires the transfer; and

(4) if the youth is released under supervision, the youth's parole has been revoked or the youth has been adjudicated or convicted of a felony offense.

(d) Criteria for Discharge. A sentenced offender shall be discharged from TYC jurisdiction upon the earliest of the following events:

(1) approval by the committing court for transfer of the youth for confinement in TDCJ; or

(2) expiration of the youth's sentence, unless:

(A) the youth is committed under concurrent determinate sentence and indeterminate commitment orders; and

(B) the sentence is completed prior to expiration of TYC's jurisdiction; or

(3) transfer to the TDCJ Parole Division on the 19th birthday for youth who:

(A) have not completed the court-imposed sentence; and

(B) have not been approved by the committing court for transfer to TDCJ for confinement.

(e) Approval Authority. The executive director or his/her designee is the final approval authority for referral to court for a transfer hearing and for transfer to TDCJ Parole Division for youth not referred to court.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 15, 2007.

TRD-200703646
Dimitria D. Pope
Acting Executive Director
Texas Youth Commission
Effective Date: August 15, 2007
Expiration Date: December 12, 2007
For further information, please call: (512) 424-6014

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER D. VOTING SYSTEM CERTIFICATION

1 TAC §81.61

The Office of the Secretary of State, Elections Division, proposes an amendment to §81.61, concerning condition for approval of electronic voting systems. Pursuant to the passage of House Bill 1549, 78th Legislature, 2003, use of a punch card or Mark Sense, and mechanical voting system in an election is now prohibited.

Ann McGeehan, Director of Elections, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Ms. McGeehan has determined also that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the change is conformity to existing law. There will be no effect on individuals or small businesses.

Comments on the proposal may be submitted to the Office of the Secretary of State, Ann McGeehan, Director of Elections, P.O. Box 12060, Austin, Texas 78711.

The amendment is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

Statutory Authority: Election Code, Chapter 31, Subchapter A, §31.003.

Election Code §122.001 is affected by this amendment.

§81.61. Condition for Approval of Electronic Voting Systems.

For any voting machine, voting device, voting tabulation device and any software used for each, including the programs and procedures for vote tabulation and testing, or any modification to any of the above, to be certified for use in Texas elections, the system shall have been certified, if applicable, by means of qualification testing by a Nationally-accredited voting system test laboratory [~~Nationally Recognized Test Laboratory (NRTL)~~] and shall meet or exceed the minimum requirements set forth in the 2002 Voting System Standards, or in any successor [~~Performance and Test Standards for Punch Card, Mark Sense, and Direct Recording Electronic Voting Systems, or in any successor voluntary standard document~~] developed and promulgated by the [~~Federal~~] Election Assistance Commission. This section applies only to systems and modifications to previously certified systems submitted after the effective date of this rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 21, 2007.

TRD-200703775
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 463-5650

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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 175. COLLECTION IMPROVEMENT PROGRAM

The Office of Court Administration of the Texas Judicial System (OCA) proposes a new Chapter 175, §§175.1-175.7, pertaining to its collection improvement program. The new rules would manifest the agency's compliance with legislative mandates to (1) cooperate with the Comptroller of Public Accounts (Comptroller) to develop a methodology for determining the collection rate of the designated local governments, (2) develop and publish on its website the program requirements, (3) develop and publish local government report requirements, and (4) cooperate with the Comptroller to develop audit standards and to provide a full explanation of the methodology, requirements and standards to the stakeholders.

Glenna Bowman, Chief Financial Officer of OCA, has determined that for each year of the first five years that the rules will be in effect, the fiscal impact will be positive for both state and local governments.

Revenue and cost estimates were based on data provided by OCA and the Comptroller. This data includes information about projected collection program revenues, as well as the associated costs to staff this function at both agencies. Based on implementation of the program by all mandated entities, a total revenue gain to the state of approximately $33.7 million per year is projected. This revenue would be distributed among 17 state funds, including General Revenue ($2.1 million); Crime Victims Compensation ($9.3 million), General Revenue--Dedicated Funds, various ($21.2 million), and Other Funds, various ($1.1 million).

State costs for the program include four full-time equivalents (FTEs) plus operating costs at OCA, and eight FTEs at the CPA, totaling $659,868 per year.

Implementing a collection program based on OCA's criteria could help local court jurisdictions improve the collection rate of court costs, fees, and fines at state and local levels. Typically, programs participating in OCA's court collection program have increased their collection rates by 16 percentage points.

Local governments would incur costs to implement the program, such as program staff and related operational expenses, which would vary depending on the size of the jurisdiction and the caseload volume. OCA anticipates that local governments could recoup program costs within the first year and experience a positive revenue gain, provided they are in compliance with program requirements.

Generally, counties and municipalities may retain 10 percent of certain state court fee amounts collected for the state as a service fee. Increasing the collection of state court fees increases the amount of the service fee that a county or municipality may retain. By implementing a collection program, these local jurisdictions could also improve the collection of local court costs, fees, and fines that would contribute to a positive revenue gain.

Ms. Bowman has determined that for each year of the first five years that the rules will be in effect, the public benefits would include improved compliance with court orders regarding payment of court costs, fees, and fines, as well as the collection of additional revenues owed to state and local government. The probable economic cost to persons required to comply with the rules will vary by jurisdiction; however, experience with the program shows that the additional revenue generated by the program will exceed the cost of implementation within the first year. There will be no economic effect on small businesses or on large businesses.

The agency requests comments on the proposed rules from any interested person; comments may be submitted to Margaret Bennett, General Counsel, Office of Court Administration, P.O. Box 12066, Austin, Texas 78711-2066 no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

SUBCHAPTER A. GENERAL COLLECTION IMPROVEMENT PROGRAM PROVISIONS

1 TAC §§175.1 - 175.5

Statutory authority for the proposed rules and the statutory provision affected by the proposed rules is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the proposed new rules.

§175.1. Definitions, Source and Purpose.

(a) "Designated counties" are those with a population of 50,000 or greater. "Designated municipalities" are those with a population of 100,000 or greater.

(b) Article 103.0033 of the Code of Criminal Procedure requires designated counties and municipalities to comply with the program developed and implemented by the Office of Court Administration of the Texas Judicial System (OCA) to improve the collection of court costs, fees, and fines imposed in criminal cases. Designated counties' programs must include district, county, and justice courts.

(c) The purpose of this chapter is to receive public comment on and to publish the results of OCA's compliance with its legislative mandates to:

(1) cooperate with the Comptroller to develop a methodology for determining the collection rate of the designated local governments;

(2) develop and publish on its website the program requirements;

(3) develop and publish local government report requirements; and

(4) cooperate with the Comptroller to develop audit standards.

§175.2. Methodology for Determining Collection Rate.

OCA and the Comptroller developed the following methodology for determining the collection rate of designated local governments. The Comptroller calculates the pre-implementation collection rate of a program by selecting a random sample of cases for a 12-month period beginning 16 months before implementation. The Comptroller tracks each case from the sample for 120 days from the date judgment is imposed to capture all information on payments, credits, and waivers. After the program is implemented, the Comptroller calculates a post-implementation collection rate using the same sampling methodology for a 12-month period beginning after implementation. The pre-program and post-program collection rates are then compared to measure collection program improvement. This provides a "snapshot" of a 120-day period and may not reflect the total collection effort over the life of the collection effort; thus, the collection rate may actually be higher than the amount reported. This methodology is used for cost-effectiveness purposes. It treats everyone consistently and establishes a baseline for comparing to the collection rate after implementation of the model program.

§175.3. Collection Improvement Program Requirements.

(a) General Scope. OCA's Collection Improvement Program applies to criminal cases in which the defendant does not pay all court costs, fees, and fines at the time they are assessed and payment is requested. A payment plan may be established by program staff in communication with the defendant or by the judge in a hearing.

(b) Program Requirements. OCA has identified 11 critical components of its collection improvement program. Five of those critical components relate to the way the program itself should be implemented, staffed, and operated. The other six critical components relate to the way the program staff communicates with the defendants and documents those communications. In accordance with Article 103.0033(j), the Comptroller will periodically audit counties and municipalities to confirm compliance with the critical components of OCA's Collection Improvement Program; the audit standards are more fully described in §175.5 of this chapter.

(c) Critical Components for Program Operations.

(1) Full Participation. Because each municipality consists of only one court, that court must participate in the program to achieve full participation. Each county has multiple district, county, and justice courts. For a county to achieve full participation, either all courts in the county except one court, or ninety percent (90%) of all courts in the county, whichever is greater, must participate in the program. Partial percentages are rounded in favor of the county.

(2) Dedicated Program Staff. Each program must designate at least one full-time equivalent employee (FTE) who has a written job description containing an essential job function of collection

activities. The priority collection job function may be concentrated in one individual employee or distributed among two or more employees. The collection function need not require 40 hours per week of FTE time, but must be a priority.

(3) Specified Payment Terms. Payment plans shall be designed to have the highest payment amounts in the shortest period of time that the defendant can successfully meet, considering the amount owed, the defendant's ability to pay, and the defendant's obligations for payment of any other court-mandated fees, such as rehabilitation fees, probation fees, and parole fees. Payment terms should generally be shorter than the term of community supervision/deferred adjudication or parole. If a defendant is imprisoned or confined in a correctional facility, payment terms should begin after release.

(4) Monitoring of Payment Plan Compliance. Each program must assign an employee to monitor compliance with payment agreements, and the assignment must be documented in the employee's job description. The employee must document the ongoing monitoring by maintaining either an updated payment due list or a manual or electronic tickler system.

(5) Proper Reporting. The program shall report its collection activity data to OCA at least annually in a format approved by OCA, as described in §175.4 of this chapter.

(d) Critical Components for Defendant Communications.

(1) Application for Extended Payment. If defendants are unable to pay in full on the day judgment is imposed, program staff must document the defendants' applications for extended payment within 30 days of the judgment imposed date. For proper documentation, applications must contain the date of the application; defendant's home address; defendant's home or primary contact telephone number; the employer's or source of support's name, address and telephone number; financial institutions and account balances; creditors, debt balances and payment amounts; at least two personal references; and stated income. The application must either be signed by the defendant, or program staff must document that the defendant acknowledged consent in a telephone call.

(2) Verification of Applications. Within five days of receiving the application, program staff must verify both the home or contact phone number and the employer or source of support. Verification may be conducted by telephone or by use of a verification service and must be documented by identifying the person conducting it and the date.

(3) Interviews of Applicants. Within five days of receipt of an application, program staff must conduct an in-person or telephone interview with the defendant to review the application and determine an appropriate payment plan. Alternatively, within 30 days of a judge setting a payment plan, program staff must conduct an in-person or telephone interview with the defendant to review the payment plan and terms of compliance. Interviews must be documented by indicating the name of the interviewer and date of the interview.

(4) Telephone Contact for Past-Due Payments. Within 30 days of a missed payment, a phone call must be made to a defendant who has not contacted the program. Phone calls may be made by an automated system, but an electronic report or manual documentation of the telephone contact must be available on request.

(5) Mail Contact for Past-Due Payments. Within 30 days of a missed payment, a written delinquency notice must be sent to a defendant who has not contacted the program. Written notice may be sent by an automated system, but an electronic report or manual documentation of the mail contact must be available on request.

(6) Pre-Warrant Contact. Within 30 days of the written delinquency notice, if no response was received, another phone call or written notice must be sent to the defendant before issuance of a warrant is requested. A pre-warrant phone call or written notice may be made or sent by an automated system, but an electronic report or manual documentation of the pre-warrant contact must be available on request.

§175.4. Content and Form of Local Government Reports.

(a) General Scope. Article 103.0033(i) requires that each program submit a written report to OCA and the Comptroller at least annually that includes updated information regarding the program, with the content and form to be determined by OCA and the Comptroller.

(b) Reporting Format and Account Setup. In cooperation with the Comptroller, OCA has implemented a web-based Online Collection Reporting System for the program participants to enter information into the system which is accessible by both agencies. For good cause shown by a program, OCA may grant a temporary waiver from timely online reporting. Program participants shall provide OCA with information for the online reporting system to enable OCA to establish the program reporting system account. The information must include the program name, program start date, start-up costs, the type of collection and case management software programs used by the program, the entity to which the program reports (e.g., district clerk's office, sheriff, etc.) the name and title of the person who manages the daily operations of the program, the mail and e-mail addresses and phone and fax numbers of the program, the courts serviced by the program, and contact information for the program staff with access to the system so user identifications and passwords can be assigned.

(c) Content and Timing of Reports.

(1) Annual Reports. By the 20th day of the month following the anniversary of program implementation, each program shall report the following information:

(A) Number of full-time and part-time collection program employees

(B) Total program budget

(C) Salary budget for the program

(D) Dollar amount of fringe benefits for the program

(E) Areas other than court collections for which the program provides services

(F) A compilation of 12 months of the monthly reporting information described in paragraph (3) of this subsection, if not reported each month as requested.

(2) Additional information may be requested in the annual reports on a voluntary basis.

(3) Monthly Reports. By the 20th day of the following month, each program is requested to provide the following information regarding the previous month's program activities:

(A) Number of cases in which court costs, fees, and fines were assessed.

(B) For court costs and fees: the dollar amount assessed and collected; the dollar amount of credit given for jail time served; the dollar amount of credit given for community service performed; and, although costs and fees should not be waived, the dollar amount waived if this occurs.

(C) For fines: the dollar amount assessed, collected, or waived; the dollar amount of credit given for jail time served; and the dollar amount of credit given for community service performed.

(D) Aging information consisting of the time span from date of assessment through the date of payment, in 30-day increments up to 120 days, and for more than 120 days.

§175.5. Audit Standards.

OCA has cooperated with the Comptroller to develop the program audit standards described in this section.

(1) Audit Sample. In auditing a program, the auditor shall use random selection to generate an adequate sample of cases to be audited, and shall use the same sampling methodology as is used for programs with similar automation capabilities.

(2) Compliance Standards. In auditing a program, the auditor will review compliance with the critical components described in §175.3(c) and (d) of this chapter.

(A) A program must be in full compliance with each program requirement described in §175.3(c)(1), (2), (4), and (5) of this chapter, and must meet the following standards for compliance with §175.3(c)(3) of this chapter: In municipal and justice court programs, at least 80% of the payment plans must provide for full payment within 120 days of the date judgment is imposed. In county and district court cases in which defendants are placed on community supervision, at least 80% of the payment plans must provide for full payment at least 60 days before the expiration of the term of community supervision. In county and district court cases not involving community supervision, at least 65% of the payment plans must provide for full payment within 180 days of the date judgment is imposed or the defendant is released from confinement. Payment plans imposed by a judge are not subject to these requirements.

(B) For the defendant communication requirements described in §175.3(d) of this chapter, the auditor shall review a sample of cases at each stage of collection. To be in substantial compliance with a critical component of §175.3(d) of this chapter, the required documentation must exist for at least 80% of the cases at that stage of collection. To be in partial compliance with a critical component of §175.3(d) of this chapter, the required documentation must exist for at least 50% of the cases at that stage of collection. In order to designate a program as complying with OCA requirements, the Comptroller shall find a program in substantial compliance with at least five of the six critical components of §175.3(d) of this chapter. If a program is in substantial compliance with only five of these components, then it must be in at least partial compliance with the remaining critical component of §175.3(d) of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703661
Margaret Bennett
General Counsel, State Office of Court Administration
Texas Judicial Council
Proposed date of adoption: October 1, 2007
For further information, please call: (512) 936-6994

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SUBCHAPTER B. IMPLEMENTATION SCHEDULE AND WAIVERS

1 TAC §175.6, §175.7

Statutory authority for the proposed rules and the statutory provision affected by the proposed rules is Article 103.0033 of the Code of Criminal Procedure.

No other statutes, articles, or codes are affected by the proposed new rules.

§175.6. Implementation Schedule.

In consultation with the Comptroller, OCA has developed and published on its website a prioritized implementation schedule for programs.

§175.7. Waivers.

Article 103.0033 provides that OCA may determine that it is not cost-effective to implement a program in a county or municipality and grant a waiver to the requesting entity.

(1) Criteria for granting waivers. OCA will grant a blanket waiver from implementation when the requesting entity demonstrates:

(A) that the estimated costs of implementing the program are greater than the estimated additional revenue that would be generated by implementing the program; and

(B) that a compelling reason exists for submitting the waiver request after the entity's published implementation deadline. The requesting entity and OCA program staff each shall submit documentation supporting their cost and revenue projections to the administrative director for determination.

(2) Temporary waivers. OCA will consider a request to grant a temporary waiver for good cause that could not have been reasonably anticipated.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Margaret Bennett
General Counsel, State Office of Court Administration
Texas Judicial Council
Proposed date of adoption: October 1, 2007
For further information, please call: (512) 936-6994

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER B. COLLECTION OF DEBTS

4 TAC §1.56

The Texas Department of Agriculture (the department) proposes amendments to §1.56, concerning waiver of fees charged to persons obtaining licenses or services from the department. The rule currently allows employees of a political subdivision that hold a noncommercial political applicator license (NCP) to obtain a waiver of the entire licensing fee. When this rule was initially adopted the pool of eligible licensees was considerably smaller than it is today. Now, however, the number of NCP licensees has grown to the point that considerable division staff time is required to receive, track, and process the waiver requests. The

amendments are proposed to improve allocation of personnel resources in the department's Licensing Division by allowing NCP renewals to be processed by the automated payment processing equipment at the Texas State Comptroller's office. The amendments eliminate the clause allowing these licensees to receive a waiver of their licensing fee. This fee will be offered at a 90% discount ($12 per year) for these NCP licensees. Without a fee, the 5,000+ renewals must currently be processed manually by department staff at considerable public expense.

Mike Cardwell, assistant commissioner for administration, has determined that for the first five-year period the amended section is in effect there will be fiscal implications for state government. There will be an increase in fees collected by approximately $50,000 per year. There will be no fiscal implications to local government as result of enforcing or administering the section, as amended.

Mr. Cardwell also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section, as amended, will be an increase in efficiency in licensing operations due to the availability of Lockbox automation and Online Renewal that was not previously available due to renewals being submitted without fees. There will be no effect on micro-businesses or small businesses. There is anticipated economic cost to persons who are required to comply with the sections as proposed in the amount of $1 per month.

Comments on the proposal may be submitted to Mike Cardwell, Assistant Commissioner for Administration, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §1.56 are proposed under the Texas Agriculture Code, §12.034, which provides the department with the authority to adopt rules which provide for the waiver of licensing and inspection fees.

The Texas Agriculture Code, Chapter 12, is affected by the proposal.

§1.56. Waiver of Fees.

(a) - (b) (No change.)

(c) Circumstances under which a fee may [~~will~~] be waived.

(1) (No change.)

(2) As authorized by section 12.034 of the Texas Agriculture Code (the Code), the department may [~~will~~] waive the following fees when the circumstances and documentation listed below are shown to exist in accordance with the provisions of this section:

(A) License Fees. License fees are generally required for legislatively mandated cost recovery purposes and will not be waived except for the following entities which file their request for fee waiver by the deadline specified in subsection (e) of this section, or have good cause for failing to file their request by that deadline, and who would otherwise have timely met the requirements for the original license or renewal thereof. The responsible assistant commissioner shall make any necessary determination regarding the existence of good cause under this paragraph. Reference to an agency, school, organization, or other artificial entity below includes only the entity. Individual employees or agents of a listed entity are not eligible for a fee waiver, regardless whether the license is for personal use or use in service to the entity. [~~Any necessary determination regarding the existence of good cause under this paragraph shall be made by the responsible assistant commissioner.~~]

(i) - (v) (No change.)

(vi) a parent-teacher association operated by, through, or under an entity described by clause (iii) or (iv) of this subparagraph that certifies in writing that all proceeds from any sales authorized by the license will be applied to educational activities, equipment, supplies, or other educational expenses incurred by the association; or

~~f(vii)~~ ~~a local governmental, state, or federal employee who certifies in writing that the activities for which the license is required will be performed solely for the local governmental, state, or federal entity for whom the employee works; or~~]

(vii) [~~(viii)~~] a department employee, if the employee's supervisor requires or recommends that the license be obtained.

(B) Additional Fee for Late Payment of License Renewal Fees (Section 12.024 of the Code).

(i) - (iii) (No change.)

(iv) Alleged failure to timely receive renewal notice. Department records show that the renewal notice was not sent by the department to the last known address according to department records (unless those records contain an obvious significant typographical error by the department that could reasonably have resulted in misdelivery of the notice) of the person in whose name the license was issued, on or before the 30th day prior to expiration of the license that was the subject of the renewal notice.

(I) - (III) (No change.)

(IV) [~~Except when waived for a class of licensees under clause (vi) of this subparagraph,~~] The [~~the~~] responsible assistant commissioner will decide on a case-by-case basis whether an alleged failure to send the renewal notice on or before the 30th day prior to expiration significantly impaired the licensee's ability to timely renew. The responsible assistant commissioner shall take into account the requirements for renewal for the particular license, the amount of time past the 30th day (prior to expiration) that the renewal notice was actually sent, if this can be determined, and any other circumstances relevant to the licensee's ability to comply by the renewal deadline in light of the alleged late mailing.

(V) (No change.)

(v) (No change.)

(vi) Other justifiable reasons. Any reason which, in the judgment of the responsible assistant commissioner, involves extraordinary circumstances that justify waiver of the fee to ensure just and fair treatment of the person who owes the fee. The department may, by written notice published in the In Addition section of the *Texas Register*, prospectively or retroactively waive late fees for an entire class of licensees if, due to malfunctions in the renewal generation process, a class of license renewals are mailed less than 30 days prior to the normal expiration date for that class of licenses or under other circumstances as deemed necessary for the just and fair treatment of an entire class of licensees. The responsible assistant commissioner shall make any necessary determination under this paragraph, regarding whether waiver is necessary to ensure just and fair treatment of the person who owes the fee. [~~Any necessary determination under this paragraph, regarding whether waiver is necessary to ensure just and fair treatment of the person who owes the fee, shall be made by the responsible assistant commissioner.~~]

(C) Inspection Fees. Inspection fees are generally required for legislatively mandated cost recovery purposes and will not be waived except for extraordinary reasons. Unless another controlling law prohibits waiver, [~~waiver is prohibited by another controlling law,~~] these fees may be waived for any reason which, in the judgment of the responsible assistant commissioner, involves extraordinary circumstances that justify waiver of the fee to ensure just and fair treatment of the person who owes the fee. The responsible assistant commissioner shall make any necessary determination under this paragraph, regarding whether waiver is necessary to ensure just and fair treatment of the person who owes the fee. [~~Any necessary determination under this paragraph, regarding whether waiver is necessary to ensure just and fair treatment of the person who owes the fee, shall be made by the responsible assistant commissioner.~~]

(D) Other Fees. Unless waiver is prohibited by another controlling law, other fees may be waived for any reason which, in the judgment of the responsible assistant commissioner, involves extraordinary circumstances that justify waiver of the fee to ensure just and fair treatment of the person who owes the fee. The responsible assistant commissioner shall make any necessary determination under this paragraph, regarding whether waiver is necessary to ensure just and fair treatment of the person who owes the fee. [~~Any necessary determination under this paragraph, regarding whether waiver is necessary to ensure just and fair treatment of the person who owes the fee, shall be made by the responsible assistant commissioner.~~]

(d) Procedure to request a waiver of a fee.

(1) (No change.)

(2) To qualify for a fee waiver, the person owing the fee or that person's authorized representative or agent must file with the department a written request, that the fee be waived, by the deadline specified in subsection (e) of this section.

(A) (No change.)

(B) A request from a governmental entity [~~or the employee of a governmental entity~~] must be filed on the letterhead of the governmental entity.

(C) (No change.)

(3) Except as otherwise provided in this subsection regarding letterhead requirements, the request must [~~may~~] be filed on a department Request to Waive Fee Form, or [~~in any~~] other written communication [~~form~~] that contains all of the following information for each fee for which a waiver is requested:

(A) - (E) (No change.)

(F) a statement or list of the reason or reasons that the waiver is requested (the department recommends that the person requesting the fee waiver refer to the appropriate subsection and paragraph in subsection (c) of this section);[~~.~~]

(G) - (H) (No change.)

(e) - (h) (No change.)

(i) Delegation by assistant commissioner. The responsible assistant commissioner may delegate any duty or privilege established by this section and the employee to whom the duty or privilege is delegated [~~delegatee~~] shall have the same authority as the delegating responsible assistant commissioner [~~to make any necessary decisions permitted or required under this section~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §9.26

The Finance Commission of Texas (the commission) proposes to amend §9.26, concerning the applicability of the Texas Rules of Civil Evidence.

Section 9.26 provides that the Texas Rules of Evidence apply in contested cases. Among its other provisions, §9.26 prohibits the administrative law judge from admitting public comments in the form of letters and affidavits into evidence in a contested case hearing, unless the letters or affidavits satisfy an exception to the hearsay rule or come into evidence without objection. The proposed amendments are intended to address an issue that has arisen as a result of the §9.26 evidentiary restriction, provisions of Government Code, Chapter 2001 (Administrative Procedure Act or APA), which applies to contested case proceedings, and certain requirements of Occupations Code, Chapter 53 (Chapter 53), related to the consequences of criminal convictions. The proposed amendments establish by rule the procedures the administrative law judge currently applies in contested case proceedings arising under Chapter 53.

The administrative law judge from time to time conducts contested case hearings in which a person appeals an adverse licensing action taken by one of the finance agencies under the jurisdiction of the commission based upon the person's criminal conviction. These hearings are subject to the §9.26 limitation regarding the admission into evidence of letters and affidavits.

The hearings are also subject to Chapter 53. Chapter 53 applies to contested case proceedings in which a licensing authority suspends or revokes a license, disqualifies a person from receiving a license, or denies to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation. In determining whether a convicted person is fit to perform the duties and discharge the responsibilities of the licensed occupation, §53.023(a)(6) of Chapter 53 directs the licensing authority to consider evidence of the convicted person's fitness that includes letters of recommendation from prosecutors, law enforcement and correctional authorities, and any other person in contact with the convicted person. Additionally, under §53.023(b),

the convicted person is responsible for obtaining and providing the recommendations to the licensing authority.

Section 53.024 of Chapter 53 provides that an appeal from a licensing authority's adverse decision based on a person's conviction is governed by the Administrative Procedures Act. One of the main features of hearings conducted under the APA is that the rules of evidence apply in the same manner as in a trial without a jury in state court. The hearsay rule is part of the rules of evidence that applies in the same manner in administrative hearings as it does in a state court non-jury trial. Additionally, §2001.087 of the APA specifically guarantees that parties may conduct cross-examination as required for a full and true disclosure of the facts.

The administrative law judge has considered statutory language, apparent legislative intent, and relevant caselaw. To harmonize and reconcile the §53.023(a)(6) requirement that the agency consider ex parte letters that are clearly hearsay in ruling on applications submitted by applicants with criminal records on the one hand and the APA provisions related to the rules of evidence and inadmissibility of hearsay on the other, the administrative law judge has interpreted §53.023(a)(6) of Chapter 53 to require the agency to consider any letters of recommendation that an applicant may offer during the preliminary or investigatory stage prior to the agency making its initial decision on the application. However, consistent with the APA, the administrative law judge does not allow such letters to be admitted into evidence in contested case hearings, unless they satisfy an exception to the hearsay rule or come into evidence without objection. Rather, the applicant must have all witnesses give testimony in person or, with advance notice to opposing counsel, by telephone in accordance with §9.32 of this chapter. The administrative judge liberally allows character witnesses to testify by telephone. In this manner, the judge accommodates witnesses and allows the parties to easily place in the hearing record the same type of information as contained in the recommendation letters, but also ensures that witnesses are available for cross-examination and to respond to clarifying questions from the judge.

The proposed amendments to §9.26 adopt the above-described procedures the administrative law judge currently applies in contested case proceedings arising under Chapter 53. The proposed amendments also make several nonsubstantive revisions in recognition that former Texas civil and criminal rules of evidence have been combined into the Texas Rules of Evidence and delete an unnecessary introductory phrase.

Larry Craddock, administrative law judge for the commission and for the Texas Department of Banking, Office of the Consumer Credit Commissioner, and Department of Savings and Mortgage Lending (finance agencies), has determined that, for each year of the first five years that the proposed amendments are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Craddock has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendments will be that parties to the finance agencies' contested case proceedings involving Chapter 53 will clearly understand the procedures applicable to obtaining admission into evidence of information contained in letters of recommendation. In light of the administrative law judge's liberal use of telephone hearings with proper notice to opposing counsel, there is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse effect on small businesses or micro-businesses.

Comments concerning the proposed amendments should be submitted within 31 days of publication in the *Texas Register* to Larry Craddock, Administrative Law Judge, Finance Commission of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to larry.craddock@banking.state.tx.us.

The amendments are proposed pursuant to Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The proposed amendments are also proposed under specific rulemaking authority contained in the substantive statutes administered by the finance agencies under the jurisdiction of the commission, including Finance Code, §§11.301, 11.302, 11.304, 11.306, 14.157, 31.003, 66.002, 96.002, 151.102, 154.051, 156.102, 181.003, 201.003, 342.551, 348.513, 371.006, and 396.051, and Health and Safety Code, §711.012(a) and §712.008.

Government Code, Chapter 2001, is affected by the proposed amendments. Finance Code, Titles 3 - 5, and Health Safety Code, Chapters 711 and 712, are affected by the proposed amendments to the extent of provisions relating to a right to hearing before a finance agency or the commission.

§9.26. Applicability of Texas Rules of [~~Civil~~] Evidence.

(a) The Texas Rules of [~~Civil~~] Evidence, as applied in non-jury [~~civil~~] cases in the courts of Texas, apply in contested cases under this subchapter. The administrative law judge shall exclude irrelevant, immaterial, or unduly repetitious evidence. When necessary to ascertain facts not reasonably susceptible of proof under those rules, the administrative law judge may admit evidence not admissible under those rules, except where precluded by law, if of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. [~~Public comments in the form of letters~~] Letters and affidavits are not admissible into evidence in contested case hearings unless they satisfy an exception to the hearsay rule or come into evidence without objection.

(b) In cases arising under Texas Occupations Code, Chapter 53 (related to consequences of criminal conviction), a letter of recommendation submitted to a finance agency during the investigative stage of the licensing proceeding will not be admitted into evidence at the hearing unless the letter satisfies an exception to the hearsay rule or comes into evidence without objection. A party must arrange to have all character witnesses give testimony in person or, with advance notice to opposing counsel, by phone pursuant to and in accordance with §9.32 of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703692
Sarah J. Shirley
General Counsel
Finance Commission of Texas
Proposed date of adoption: October 19, 2007
For further information, please call: (512) 475-1300

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS
SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.10

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Banking or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Finance Commission of Texas (commission), on behalf of the Department of Banking (department), proposes the repeal of §25.10, concerning record keeping requirements for insurance-funded prepaid funeral benefits contracts.

Chapter 25 implements Finance Code, Chapter 154 (Chapter 154), which regulates the sale of prepaid funeral benefits contracts (prepaid contract). Section 25.10 establishes the record-keeping requirements that apply to insurance-funded prepaid contracts.

The department initiated a project to revise §25.10 approximately one year ago and the commission published proposed amendments to the section in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10473). The commission thereafter withdrew the proposed amendments so that the department could continue to consider the input of Chapter 154 insurance permit holders and further refine the section's requirements. The department has now completed its work and determined that certain existing requirements should be eliminated and others clarified. Because of the extent of these and other, nonsubstantive revisions, the commission proposes to repeal the existing section and replace it with a new §25.10, which the commission is simultaneously proposing in this issue of the *Texas Register*.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that, for each of the first five years the proposed repeal is in effect, there will be no fiscal implication for state or local governments.

Ms. Newberg has further determined that, for each year of the first five years that the proposed repeal is in effect, the anticipated public benefit will be the deletion of regulations that are unclear or unnecessary. The repealed section will be replaced with new, updated regulations that are clear, specific and consistent with the department's current interpretation and application of insurance prepaid contract recordkeeping requirements, and that will enhance the department's enforcement of, and insurance permit holders' compliance with, the regulatory requirements of Chapter 154. For each year of such first five years, there will be no economic cost to persons required to comply with the proposed repeal. Finally, Ms. Newberg has determined that the proposed repeal will not have an adverse effect upon small businesses or micro-businesses.

To be considered, comments concerning the proposed repeal must be submitted within 30 days of publication to Russell Reese, Director, Special Audits Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 or by e-mail to russell.reese@banking.state.tx.us.

The repeal is proposed under Finance Code, §154.051(b)(2) and (3), which authorize the commission to adopt reasonable rules regarding the keeping and inspection of records relating to the sale of prepaid funeral benefits and the filing of contracts and reports.

Finance Code, Chapter 154, is affected by the proposed repeal of this section.

§25.10. Record Keeping Requirements for Insurance-Funded Contracts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sarah J. Shirley
General Counsel
Texas Department of Banking
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7 TAC §25.10

The Finance Commission of Texas (commission), on behalf of the Department of Banking (department), proposes new §25.10, concerning recordkeeping requirements for insurance-funded prepaid funeral benefits contracts.

Chapter 25 implements Finance Code, Chapter 154 (Chapter 154), which regulates the sale of prepaid funeral benefits contracts (prepaid contract). Proposed new §25.10 establishes the recordkeeping requirements that apply to insurance-funded prepaid contracts. The proposed new section will replace existing §25.10, concerning record keeping requirements for insurance-funded contracts, which the commission is simultaneously proposing for repeal in this issue of the *Texas Register*.

The department initiated a project to revise existing §25.10 approximately one year ago and the commission published proposed amendments to the section in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10473). The department received comments in response to the published notice and also met with several permit holders that sell insurance-funded prepaid contracts (insurance permit holders). The commission thereafter withdrew the proposed amendments so that the department could continue to consider the input of Chapter 154 insurance permit holders and further refine the section's requirements. The department has now completed its work and determined that certain of the existing requirements should be eliminated and others clarified. Because of the extent of these and other, nonsubstantive revisions, the commission is proposing a new §25.10, rather than amendments to the existing section.

Chapter 154 provides a regulatory framework that allows a person to arrange and pay for a funeral in advance. The chapter imposes a duty upon the department and grants the department the authority to regulate sellers of prepaid contracts to make sure that (1) the prepaid contract is performed in accordance with its terms and the funeral merchandise and services are provided as specified in the contract; and (2) funds are available to pay for the contracted funeral merchandise and services. In developing revisions to existing §25.10, the department has been sensitive to insurance permit holder concerns about regulatory burden and has sought to reduce recordkeeping requirements to the extent possible and in a manner consistent with the department's basic regulatory construct: the department must have the information

it considers necessary to verify that insurance-funded contracts are performed and funded in accordance with their terms and Chapter 154.

The department believes that proposed new §25.10 achieves an appropriate balance. As a general matter, the proposed new section provides clarity. The requirements are set out specifically and reflect the department's current construction and application of the requirements carried over from existing §25.10. The proposed new section also applies plain language writing principles by using direct language, eliminating unnecessary verbiage, using terms consistently, and incorporating current terminology. Additionally, in response to input from insurance permit holders, proposed new §25.10 eliminates a number of existing recordkeeping requirements the department considers unnecessary. The proposed new section also provides permit holders with more flexibility with respect to how records are maintained and, as a general matter, shortens the retention period or triggering event, such as a contract status change, from three years to the period since the previous examination. However, proposed new §25.10 continues to require permit holders to maintain the records necessary for the department to compare the preneed contract and the at-need performance to ensure that the prepaid contract was performed and funded in accordance with its terms and the law.

Proposed new §25.10(a) consolidates into one subsection the general requirements applicable to the place and manner in which records must be kept and produced for department examination. Proposed new subsection (a) recognizes that a permit holder may obtain an exception in accordance with proposed new §25.10(g)(3) and (h). Absent an exception, a permit holder must maintain records and produce them for inspection as specified in the section. The records must be made available at the physical location in Texas previously designated by the permit holder in writing. Further, all the records specified in the department's pre-examination records request must be produced at the beginning of the examination, and other records requested during the examination must be produced in a manner that does not impede the efficient conduct of the examination. The records must be maintained either in hard copy form, or stored on microfiche or in an electronic database from which the record can be retrieved and printed in hard copy in a manner, again, that does not delay the examination.

Proposed new §25.10(b) establishes recordkeeping requirements with respect to a permit holder's general files. The proposed new subsection eliminates many of the requirements of existing §25.10(b). For example, under the proposed new subsection, a permit holder is no longer required to maintain the latest approved renewal permit application and its last filed annual report, the current permit issued by the department, each department-approved agent appointment and resignation given within the past three years, or a list of and related orders approving each trust to insurance conversion for the past three years.

Proposed new subsection (b) clearly identifies and requires a permit holder to maintain certain prepaid contract forms, insurance depository letters, financial statements, Texas Department of Insurance (TDI) approval letters, and other insurance regulatory documentation, and also department-related documentation, including examination report acknowledgments, correspondence, and approvals or directions upon which a permit holder relies in connection with its current operations. Finally, the proposed new subsection requires a permit holder to maintain price lists or alternative documentation for certain outstanding prepaid contracts.

Proposed new §25.10(c) requires a permit holder to maintain a prepaid contract file on each contract purchaser. The proposed new subsection specifies how the file must be maintained and the general individual contract records that must be included in the file. Proposed new subsection (c) also clearly identifies in paragraphs (2) and (3) the specific records that must be maintained with respect to outstanding contracts, matured contracts performed by the contracted funeral provider or under a successor provider assignment, and matured contracts performed by some other person. Many of the requirements, particularly those related to matured contracts performed by the contracted funeral provider or assigned successor, provide the documentation the department needs to confirm that the contracted for benefits were performed and the contract was correctly funded, or provide an explanation of differences between the prepaid contract and at-need performance.

Additionally, proposed new subsection (c) specifies in paragraphs (4) and (5), respectively, the records that must be maintained in a contract file pertaining to a canceled contract and a file pertaining to a contract whose insurance funding policy has changed status since the previous examination.

In addition to requiring a permit holder to maintain general and individual contract files, proposed new §25.10 carries over in subsection (d) the requirements from existing §25.10 that a permit holder maintain certain ledgers and reports regarding its prepaid funeral benefits operations for both new and conversion contract sales. Paragraph (1) of subsection (d) requires a permit holder to maintain an historic contract register that reflects all prepaid contracts and insurance policies and notes contract status and other specified information. Paragraph (2) requires that detailed individual payment receipt records be kept. Paragraph (3) and (4) require and specify the information that must be maintained, respectively, in an in-force policy register and in reports detailing out-of-force and non-forfeiture policies. Proposed new paragraphs (1), (3) and (4) set out how the required registers and reports must be maintained, totaled, balanced and formatted.

Additionally, proposed new §25.10(d) requires in paragraph (5) that a permit holder maintain an activity reconciliation report that reflects what has occurred with respect to a policy that moves from in-force to out-of force or non-forfeiture status during the reporting period. Specifically, the report must show the activity related to each in-force policy identified in the in-force policy register required under paragraph (3) and must balance to the corresponding policy subsequently identified in the out-of-force and non-forfeiture policy reports required under paragraph (4). The permit holder must provide documentation to support the reported activity and the report must be balanced as of June 30 and December 31 of each year.

Proposed new §25.10(e) specifies the records a permit holder must maintain regarding trust-funded contracts that have been converted to insurance-funding.

Proposed new §25.10(f) requires a permit holder to maintain, and make available for examination, corporate minutes and records related to actual or anticipated regulatory action or litigation that could result in the permit holder's insolvency.

Proposed new §25.10(g) authorizes certain exceptions from the section's recordkeeping requirements. Proposed paragraph (1) confirms that a permit holder that sells only insurance-funded contracts need not maintain records applicable

only to trust-funded contracts. Proposed paragraph (2) explains the records that must be kept with respect to prepaid contracts sold prior to the effective date of the section. Finally, proposed paragraph (3) authorizes a permit holder to apply to the commissioner for an exception to the proposed new section's recordkeeping requirements, and provides that an exception may be granted or revoked for good cause by the commissioner's prior written direction.

Proposed new §25.10(h) pertains to the relocation of records. A permit holder that wishes to change the location where records are maintained or the examination is conducted must give the department written notice specifying the new address. Additionally, if a permit holder wishes to maintain records or have an examination conducted outside of Texas, the permit holder must first request and obtain an exception under proposed new §25.10(g)(3). Proposed new subsection (h) also reserves to the commissioner the right to deny or revoke a records relocation approval if such action is necessary to effectively regulate the permit holder and examine records. The department does not anticipate having to deny or revoke a relocation approval except in unusual circumstances. A relocation approval might need to be revoked if, for example, funding issues preclude department examiners from traveling out-of-state to conduct examinations.

Proposed new §25.10(i) requires that the documents and records required under the proposed new section be filed within 30 days of receipt, and specifies the time within which cash and other forms of payment and cash withdrawals must be posted.

Proposed new §25.10(j) requires a permit holder that maintains records electronically to provide evidence of a disaster recovery plan, or compliance with TDI business continuity planning requirements, and offsite data storage capabilities regarding all records and documentation related to prepaid contracts.

Consistent with established practice, the department provided a draft of the proposed revisions to §25.10 to its 57 Chapter 154 insurance permit holders and invited informal comment. The department received one comment from an insurance permit holder. The department also received comments on behalf of the Texas Pre-Need Coalition (TPNC) suggesting several revisions and noting TPNC's fundamental disagreement with the department regarding the records that can and should be required of an insurance permit holder, the same position TPNC argued in connection with the previously proposed §25.10 amendments.

The department made several revisions to the proposal draft in response to the submitted comments. However, the requirements of proposed new §25.10 reflect the department's longstanding interpretation and application of Chapter 154 that insurance permit holders must maintain the records and provide the information the department considers necessary to discharge its statutory duty and confirm that insurance-funded prepaid contracts are performed and funded in accordance with their terms and Chapter 154.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that, for each of the first five years that proposed new §25.10 is in effect, there will be no fiscal implication for state or local governments.

Ms. Newberg has further determined that, for each year of the first five years that the proposed new section is in effect, the anticipated public benefit will be updated and more specific and understandable regulations that will enhance the department's enforcement of, and insurance permit holders' compliance with, the regulatory requirements of Chapter 154. For each year of such first five years, there will be no economic cost to persons required to comply with the proposed new section. Finally, Ms. Newberg has determined that the proposed new section will not have an adverse effect upon small businesses or micro-businesses.

To be considered, comments concerning proposed new §25.10 must be submitted within 30 days of publication to Russell Reese, Director, Special Audits Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 or by e-mail to russell.reese@banking.state.tx.us.

The proposed new section implements Finance Code, §154.051(b)(2) and (3), which authorize the commission to adopt reasonable rules regarding the keeping and inspection of records relating to the sale of prepaid funeral benefits and the filing of contracts and reports.

Finance Code, Chapter 154, is affected by the proposed new section.

§25.10. Recordkeeping Requirements for Insurance-Funded Contracts.

(a) Application and general requirements. This section applies to a permit holder that sells or maintains insurance-funded prepaid funeral benefit contracts (prepaid contracts). Unless the commissioner grants an exception as provided for in subsections (g)(3) and (h) of this section, a permit holder must maintain and produce for examination the records as specified in this section. The permit holder:

(1) must make the records available to the department for examination at the physical location in Texas that the permit holder has designated in written notice to the department on file at the time of the examination;

(2) is required to make all the records specified in the department's pre-examination records request available to the department at the beginning of an examination and must produce such other records as may be requested during the examination in a manner that does not impede the efficient conduct of the examination; and

(3) must maintain the records either in hard copy form or stored on microfiche or in an electronic database from which the record can be retrieved and printed in hard copy in a manner that does not impede the efficient conduct of the examination.

(b) General files. A permit holder subject to this section must maintain general files regarding its prepaid funeral benefits operations. The files must contain the original or a copy of the following:

(1) each department-approved prepaid contract form currently used or approved for sales since the last examination, unless no outstanding contracts exist using the form;

(2) all department-approved insurance depository letters pertaining to outstanding prepaid contracts;

(3) if the permit holder is an insurance company or an entity that controls or is controlled by an insurance company, the most current consolidated financial statement or the most recent annual statement filed with the insurance regulatory agency of the insurance company's state of domicile;

(4) the examination report acknowledgments, signed by the permit holder's board of directors, for the last examination report;

(5) the Texas Department of Insurance (TDI) approval letter for each policy form issued to fund any outstanding prepaid contract or prepaid contract that was sold and has matured since the last examination;

(6) a copy of the final post-conversion summary for each trust-to-insurance conversion approved by the department since the last examination;

(7) all correspondence with the department since the last examination;

(8) copies of all recordkeeping exceptions and other department or commissioner approvals or directions upon which the permit holder relies in connection with its current operations;

(9) if the permit holder is an insurance company or an entity that controls or is controlled by an insurance company, a copy of the examination reports of the insurance regulatory agency of the insurance company's state of domicile for the period since the last examination, and the responses to the regulatory agency regarding examination report findings that are pertinent to the prepaid funeral benefits business, unless the law of the state of domicile prohibits disclosure of the examination reports and related correspondence to the department; and

(10) for any outstanding prepaid contract with a funeral provider that has an issue date since the last examination, either:

(A) general, casket, outer burial container, and urn price lists for the corresponding or contracted funeral provider; or

(B) alternative documentation that demonstrates compliance with required casket, outer-burial container and urn merchandise descriptions.

(c) Individual files.

(1) A permit holder subject to this section must maintain a prepaid contract file on each purchaser. The file must either be maintained separately or be capable of retrieval separately for outstanding contracts and may be maintained either chronologically, alphabetically or serially by policy number. Each file must contain all correspondence pertaining to the contract, including documentation to evidence that the executed prepaid contract has been issued to the contract purchaser and the funding policy has been issued to the contract purchaser or policy owner within 30 days of the receipt of the initial down payment and insurance application.

(2) Each file pertaining to an outstanding prepaid contract must contain a copy of the contract, any irrevocable assignments, and the data face sheet of the insurance policy or annuity contract funding the contract.

(3) Each file pertaining to a matured prepaid contract must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding prepaid contract, and must also contain a fully completed department withdrawal form, or evidence of department withdrawal approval, or a proof of claim form prepared and completed by the permit holder which contains all the required information included on the department's prescribed withdrawal form. In addition:

(A) a matured-contract file for which services were provided by the contracted funeral provider or under an executed successor provider assignment accepted by all contracting parties must contain:

(i) the original or a final copy of the completed at-need contract or funeral purchase agreement, the cemetery interment order if the prepaid contract relates only to a grave opening and closing fee, outer burial container or other related merchandise and services, or an itemization of services performed and merchandise delivered; the document must be signed by the decedent's personal representative and indicate the prepaid credits and discounts applied and the balance due, if any, from the family at the time of death;

(ii) documentation to substantiate any upgrades or downgrades or discounts or credits given and to explain any differences between the prepaid and the at-need contracts;

(iii) a copy of a certified death certificate;

(iv) the certificate of performance of contract services executed by the decedent's personal representative;

(v) evidence of payment of the policy(s) death benefits to the servicing funeral provider, e.g., a copy of payment check or check stub;

(vi) documentation of premium payment history;

(vii) documentation that reflects the balance owing, if any, on the funding policy(s) and the death benefits available at the time of claim; and

(viii) if applicable, evidence of payment to the decedent's personal representative of any refund of contract overcharges by the provider.

(B) a matured contract file for which services were provided by a person other than a person listed in subparagraph (A) of this paragraph must contain:

(i) a signed assignment of benefits statement from the purchaser or purchaser's representative requesting the delivery of funds to the servicing funeral provider;

(ii) evidence of payment to the servicing funeral provider;

(iii) a copy of a certified death certificate; and

(iv) documentation of premium payment history which reflects the balance owing, if any, on the funding policy(s) and the death benefits available at the time of claim.

(4) Each file pertaining to a canceled prepaid contract must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding contract, a completed departmental withdrawal form or evidence of departmental withdrawal approval, documentation of premium payment history to support the available cash surrender value, and evidence of payment of cancellation benefit, e.g., a copy of payment check or check stub.

(5) Each file pertaining to a prepaid contract whose funding insurance policy has changed status since the last examination, for example, to a reduced paid-up, lapsed, or extended term insurance policy, must be retained for the period since the last examination. The file must contain copies of all documents required for an outstanding contract and a copy of the permit holder's letter to the purchaser informing the purchaser of contract status. The letter must state the date of the status change and, if applicable, the reduced death benefit coverage amount and the termination date of such coverage. The letter must also inform the purchaser that the prepaid benefits may not be honored by the funeral provider due to the non-forfeiture or delinquent status of the funding policy. Each reduced paid-up or extended term policy file must also include copies of an election form indicating the purchaser has chosen reduced paid-up or extended term status, unless the policy has automatic non-forfeiture provisions.

(d) Records. A permit holder subject to this section must maintain the following records regarding its prepaid funeral benefits operations for both new and conversion sales:

(1) an historical contract register maintained chronologically or by policy number or by contract number reflecting all prepaid contracts and policies, and a notation of the status of the contracts and policies as outstanding, matured, canceled, or reduced paid-up. Con-

tracts may be removed from the register when three years or more has elapsed from the date of final disposition. The contract register must be formatted in columns with headings that accurately describe the information set out in each column. The specific information required to be included in separate columns is:

(A) the prepaid contract and corresponding policy number(s);

(B) the prepaid contract purchase date;

(C) the purchaser's name;

(D) the beneficiary's name (if different from the purchaser's name);

(E) the prepaid contract total; and

(F) the final disposition of the prepaid contract, including notations as to whether the contract and policy are matured, canceled, surrendered, lapsed, reduced paid-up, extended term, voided, or not taken. The notation must also include the date of withdrawal claim and the amount of funds paid; or, in lieu thereof, a record separate from the register, listing matured, canceled, surrendered, lapsed, reduced paid-up, extended term, voided, or not taken contracts and policies for the examination period and setting out the contract and/or policy number, contract purchaser, date of the withdrawal claim paid, and amount of the withdrawal claim paid;

(2) detailed individual payment receipt records to document the date of initial collection of the down payment on the funding application and subsequent premium payments from the contract purchaser by the permit holder or its agent;

(3) an in-force policy register, maintained either chronologically by date of policy issuance, alphabetically by the insured's name, or serially by policy number. The in-force register must balance to the policy activity report required under paragraph (5) of this subsection, and must accumulate to grand totals for all policies with respect to the information required under subparagraphs (C), (E), (F), and (G) of this paragraph. The in-force register must be formatted in columns with headings that accurately describe the information set out in each column. The specific information required to be included in separate columns is:

(A) the insured's name;

(B) the policy number or numbers;

(C) the prepaid contract total;

(D) the date of policy issuance;

(E) the death benefit, or insurance in force, whichever is applicable;

(F) growth, e.g., dividends and interest, attributable to outstanding policies for the reporting period; and

(G) cumulative growth totals for each outstanding policy;

(4) reports detailing out-of-force and non-forfeiture policies, subtotaled in count and reduced coverage amount by status codes for death maturity, canceled, surrendered, lapsed, reduced paid-up, extended term, voided, not taken, or such other codes which may be used to designate policies no longer in force, maintained either chronologically by date of policy issuance, alphabetically by the insured's name, or serially by policy number. If the reports cannot be sub-totaled, a separate report must be generated for each type of termination status or non-forfeiture change. The reports must balance to the policy activity report required under paragraph (5) of this subsection. The reports must be formatted in columns with headings that accurately describe the information set out in each column. The specific information required to be included in separate columns is:

(A) the insured's name;

(B) the date of policy issuance;

(C) the policy number or numbers;

(D) the date the policy matured, lapsed, or was surrendered or canceled; and

(E) the amount of in-force coverage or face value of insurance that has been paid, reduced, deleted, or transferred.

(5) an activity reconciliation report that shows the activity related to each policy that was identified in the in-force policy register required under paragraph (3) of this subsection and balances to the corresponding policy subsequently identified in the out-of-force and non-forfeiture policy reports required under paragraph (4) of this subsection . The permit holder must provide documentation to support the reported activity and may use the department's Annual Report Recapitulation of Policy Activity format to complete this report. The report must be balanced as of June 30 and December 31 of each year.

(e) Conversions. A permit holder subject to this section shall maintain a file copy of the original trust-funded prepaid funeral contracts that have been converted to insurance funding and the payment history records for each converted contract prior to conversion.

(f) Corporate records. Corporate records of a permit holder subject to this section pertaining to actual or anticipated regulatory action or litigation that could result in the permit holder's insolvency and all corporate minutes must be maintained and made available to the department at each examination.

(g) Exceptions.

(1) A permit holder that sells only insurance-funded contracts is not required to maintain records that are applicable only to trust-funded contracts.

(2) With respect to contracts sold prior to the effective date of this section, a permit holder will not violate this section if it cannot produce records required under this section which were not previously required by statute or rule. However, basic reporting of in-force benefit amounts and policy activity from the last examination date to the current examination date will be required of all permit holders for insurance companies that have outstanding insurance policies funding prepaid contracts in Texas.

(3) A permit holder may apply to the commissioner for an exception to the requirements of this section. An exception may be granted or revoked for good cause only by prior written direction of the commissioner.

(h) Relocation of records. Prior to changing the location where required records are maintained or where the examination is to be performed pursuant to §154.053(a) of the Texas Finance Code, a permit holder must notify the department, specifying the new address in writing, and, if the change in location requires the granting of an exception, comply with subsection (i)(3) of this section before required records are moved to the new location. The commissioner may revoke a records location if the commissioner determines that such action is necessary to effectively regulate the permit holder and examine the records.

(i) Maintenance of files. Documents and records required to be maintained under this section must be filed within 30 days of receipt. Cash and other forms of payments received must be posted within 30

days of receipt, and cash withdrawn on death maturity must be posted within 30 days of actual withdrawal.

(j) Disaster recovery plan. If required records are maintained electronically, the permit holder must provide evidence of a disaster recovery plan or compliance with TDI business continuity planning requirements and offsite data storage capabilities regarding all records and documentation related to prepaid contracts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sarah J. Shirley
General Counsel
Texas Department of Banking
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7 TAC §25.23, §25.24

The Texas Finance Commission (commission), on behalf of the Department of Banking (department), proposes amendments to §25.23, concerning application fees, and §25.24, concerning examination costs and assessment fees.

Section 25.23 establishes the application and renewal fees a person must pay to the department to obtain and maintain a license to sell prepaid funeral benefits contracts (prepaid contracts) under Finance Code, Chapter 154 (Chapter 154). Section 25.24 requires a Chapter 154 permit holder to pay an annually assessed examination fee (annual assessment). The commission proposes to amend §25.23(b)(2) and §25.24(b). As explained in this preamble, the proposed amendments to §25.23(b)(2) and §25.24(b)(1) change the date as of and the document in which outstanding contract information is reported for renewal fee and annual assessment calculation purposes. Additionally, the proposed amendments to §25.24(b)(1) create a tier assessment structure for annual assessments and generally increase the assessment a permit holder must pay. The proposed amendments are intended to provide greater consistency with respect to the calculation of annual assessments and allow the department to more accurately assess the prepaid funeral benefits contracts industry. The proposed amendments will also enable the department to recover its costs in administering and enforcing Chapter 154.

Section 25.23(b)(2) specifies the basis on which the renewal fee is calculated. Under existing paragraph (2), the fee is based upon a permit holder's total number of outstanding prepaid contracts as of the permit holder's last department examination. The proposed amendment to paragraph (2) provides that the amount of the fee is based on the total number of outstanding prepaid contracts as reflected on the most recent annual report filed by the permit holder with the department.

Section 25.24(b) pertains to the annual assessment a permit holder must pay as an examination fee pursuant to Finance Code, §154.054. Section 25.24(b)(1) sets out the basis and formula for calculating the assessment. The proposed amendments to paragraph (1) provide that the amount of the annual assessment is based on the permit holder's total number of outstanding prepaid contracts as reflected on the most recent annual report filed with the department.

Additionally, the proposed amendments to §25.24(b)(1) revise the formula for determining the amount of the annual assessment and add an assessment schedule. Existing paragraph (1) provides for an annual assessment based upon a rate of up to $3.00 for each outstanding contract, subject to a minimum and maximum assessment. The proposed amendments to paragraph (1) create a "tier" assessment structure by establishing dollar amounts and a corresponding assessment for each range as set out in the schedule. For example, if a permit holder's total number of outstanding contracts is between 1,000 and 1,999, the annual assessment is $3,100 plus an amount that represents the number of outstanding contracts over 1,000 multiplied by $2.00, the specified factor. The proposed amendments to paragraph (1) also increase the minimum assessment from $100 to $150 and the maximum assessment from $7,350 to $15,000.

The proposed amendments to §25.24(b) also delete the statement in existing paragraph (3) that examination fees cannot be reduced or waived. The proposed amendments to paragraph (3) replace that statement with the requirement that a new Chapter 154 permit holder that has not yet filed the first annual report required by Finance Code, §154.052, must pay an examination fee of $600 per day for each examiner and all associated travel expenses. Finally, the proposed amendments to §25.24(c) clarify in paragraph (1) that the referenced "annual examination fee" is the annual assessment.

As a general matter, the proposed amendments to §25.24(b)(1) may significantly increase the annual assessment a Chapter 154 permit holder must pay. The department has determined that the increase is necessary to comply with the Finance Code, §154.054, mandate that the commission impose upon and collect from Chapter 154 permit holders fees sufficient to cover the cost of examination, including salary and travel expenses for department employees and other expenses reasonably incurred in conducting the examination, the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing Chapter 154.

The commission has for a number of years successfully avoided raising assessments--despite inflation and rising program costs, the amount of the annual assessment charged Chapter 154 permit holders has not increased since 1994. The need to now increase the amounts collected from permit holders is attributable to several factors. The primary factor is that the department has had to employ additional examiners in order to complete examinations within the time parameters established by the department's statutorily mandated performance measures. Additionally, for the past several years, the department has collected administrative penalties from permit holders that have repeatedly violated Chapter 154 and 7 TAC Chapter 25, and has used the penalties to offset the department's overall Chapter 154 costs. The department expects compliance to improve and does not anticipate the collection of significant administrative penalties in the future. As a result, the department must compensate for lost revenue.

Based upon the number of Chapter 154 permit holders and the department's experience in regulating and examining them, the department believes that the annual assessments established by the proposed amendments to §25.24(b) will provide the funding required to administer and enforce Chapter 154 and to do so in a manner that is fair and equitable to all permit holders. In determining the amount of the proposed assessments, the

department has adhered to the limitation that only such funds as are necessary to defray Chapter 154 administrative and enforcement costs, the cost of examination, and the proportionate cost of maintenance and operation of the department may be imposed and collected, and that the department is statutorily prohibited from retaining excess revenue.

Consistent with established practice, the department provided each of the department's 415 Chapter 154 permit holders with a draft of the proposed amendments, along with a letter detailing the permit holder's anticipated annual assessment under the proposal, and invited informal comment. The department received one comment submitted on behalf of the Texas Pre-Need Coalition. The commenter suggested that the proposed fee structure be revised to provide for a contract fee to be paid by a consumer upon entering into a prepaid contract transaction. A portion of the fee could be paid to the department to offset examination costs and support the costs associated with abandoned books of business of insolvent permit holders. The department does not have a mechanism in place at this time to administer such a fee program, but notes that a permit holder is not precluded from assessing a contract processing fee to help offset the increase in assessments.

The renewal fee and assessments provided for in the proposed amendments are established by the commission and not mandated by the Legislature.

Russell Reese, Director of Special Audits, Texas Department of Banking, has determined that for the first five-year period that the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. The total amount of the department's appropriations for all regulatory programs the department administers will remain approximately the same. Only the sources of revenue to enforce and administer Chapter 154 will change.

Mr. Reese has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be greater consistency with respect to the calculation of assessments and the more accurate assessment of the prepaid funeral benefits contracts industry. Additionally, the proposed amendments will enable the department to recover its costs in administering and enforcing Chapter 154. The prepaid funeral benefits contracts industry will wholly fund its regulation and, as a result, such regulation will not require the expenditure of public monies from other sources. Mr. Reese has further determined that, for each of the first five years the proposed amendments are in effect, there will be no economic costs to Chapter 154 permit holders as a result of the proposed amendments to §25.23. The economic costs to permit holders as a result of the proposed amendments to §25.24 will be an average yearly increase in the annual assessment of approximately $440.

Of the department's 415 Chapter 154 permit holders, 243 are micro-businesses, 30 are small businesses, and 142 are large businesses under the definitions of those terms in Government Code, §2006.001. The average annual assessment increase for the micro-businesses under the proposed amendments to §25.24 will be approximately $141, or 68.4486 per 100 outstanding prepaid contracts. The average annual assessment increase for the small businesses will be approximately $200, or 25.8604 per 100 outstanding prepaid contracts. The average annual assessment increase for the large businesses will be $1,003, or 19.0311 per 100 outstanding prepaid contracts.

To be considered, comments on the proposed amendments must be submitted in writing not later than 30 days after the date of publication of this notice. Comments should be directed to Russell Reese, Director, Special Audits Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by e-mail to Russell.Reese@banking.state.tx.us.

The amendments are proposed under the authority of Texas Finance Code, §154.051, which authorizes the commission to adopt rules establishing fees to defray the costs of administering Chapter 154, and §154.054, which directs the commission to establish an annually assessed examination fee sufficient to cover the costs of examination, the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing the chapter.

Texas Finance Code, Chapter 154, is affected by the proposed amendments.

§25.23. Application and Renewal Fees.

(a) (No change.)

(b) Application fees. The application fees set forth in this subsection have been set in accordance with the Finance Code, Chapter 154, for the purpose of defraying the cost of administering the Finance Code, Chapter 154. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) (No change.)

(2) Renewal fee. The renewal fee for an existing permit is based on the number of outstanding contracts as reflected on the most recent annual report you have filed with the department [~~of the last examination~~], as specified in the Renewal Fee Schedule following this paragraph. You must pay the renewal fee by ACH debit on or before March 1 of each year, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the renewal fee and the date the department will initiate payment of the fee by ACH debit, which will be March 1 of each year or, if March 1 is a holiday, the last business day immediately preceding March 1.
Figure: 7 TAC §25.23(b)(2) (No change.)

(3) - (4) (No change.)

§25.24. What fees must I pay for an examination?

(a) (No change.)

(b) As a prepaid funeral benefits seller, what fees must I pay for department examinations?

(1) An annual assessment must be paid as an examination fee to the department to defray the cost of administering §154.054 of the Finance Code. The amount of your annual assessment is based on the number of outstanding contracts as reflected on your most recent annual report filed with the department. You must pay the annual assessment specified in the following table: [~~Section 154.054 of the Finance Code requires that you must pay an examination fee to the department. This examination fee is calculated at a rate of up to $3.00 for each contract outstanding as of your last examination. Except that:~~]
Figure: 7 TAC §25.24(b)(1)

[~~(A) If you annual examination fee calculation is less than $100, your annual examination fee will be $100; or~~]

[~~(B) If your annual examination fee calculation is more than $7,350, your annual assessment will be $7,350.~~]

(2) (No change.)

(3) If you are a new permit holder and have not yet filed your first annual report required by §154.052 of the Finance Code, you must pay an examination fee of $600 per day for each examiner and all associated travel expenses. Your subsequent annual assessment will be calculated in accordance with paragraph (1) of this subsection. [~~Your examination fee will not be reduced or waived.~~]

(c) How will the department bill me for the examination fees and when must I pay them?

(1) Your annual examination fee (annual assessment) may be billed in quarterly or fewer installments each fiscal year. You must pay a billed installment by ACH debit or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department will initiate payment by ACH debit.

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703701
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: October 19, 2007
For further information, please call: (512) 475-1300

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CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.1

The Texas Finance Commission (commission), on behalf of the Department of Banking (department), proposes amendments to §26.1, concerning fees.

Section 26.1(b) establishes the fees a person must pay the department to operate a perpetual care cemetery (PCC) under Health and Safety Code, Chapter 712 (Chapter 712), and requires a PCC certificate holder to pay an annual fee and an annually assessed examination fee (annual assessment). As explained in this preamble, the proposed amendments to §26.1(b) change the date as of and the document in which trust fund balance information is reported for annual fee and assessment calculation purposes. Additionally, the proposed amendments create a tier assessment structure for annual assessments and provide generally for increased assessments. The proposed revisions are intended to provide greater consistency with respect to the calculation of assessments and allow the department to more accurately assess the perpetual care cemetery industry. The proposed amendments will also enable the department to recover its costs in administering and enforcing Chapter 712.

Section 26.1(b)(2) specifies the basis on which the annual fee is calculated. Under existing paragraph (2), the fee is based upon the perpetual care fund balance as of the date of the PCC certificate holder's last examination. The proposed amendment to paragraph (2) provides that the amount of the fee is based on the fund balance as reflected on the most recent annual statement of funds report filed by the PCC certificate holder with the department.

Section 26.1(b)(3) specifies the basis and formula for calculating the annual assessment. As does the proposed revision to paragraph (2), the proposed amendments to paragraph (3) provide that the amount of a certificate holder's annual assessment is based on the fund balance as reflected on the most recent annual statement of funds report filed with the department. Additionally, the proposed amendments revise the formula for determining the amount of the annual assessment and add an assessment schedule. Existing paragraph (3) provides for an annual assessment based upon a flat rate of $0.0030 per dollar of the fund balance. The proposed amendments create a "tier" assessment structure by establishing "ranges" of dollar amounts and a corresponding assessment for each range as set out in the schedule. For example, if the total amount of a PCC required fund balance is between $100,000 and $199,999.99, the annual assessment is $650 plus the amount of the required fund balance over $100,000 multiplied by .0035, the specified factor. The proposed amendments to paragraph (3) also increase the minimum assessment from $115 to $200 and the maximum assessment from $6400 to $7600.

Finally, the proposed amendments add a new paragraph (4) to §26.1(b). The proposed new paragraph requires a new PCC certificate holder that has not yet filed the first annual statement of funds report to pay an examination fee of $600 per day for each examiner and all associated travel expenses, and to pay subsequent annual assessments in accordance with the tier assessment structure provided for in the proposed amendments to paragraph (3).

As a general matter, the proposed amendments to §26.1(b) may increase the annual assessment a PCC certificate holder must pay. The department has determined that the increase is necessary to comply with the statutory mandate of Health and Safety Code, §§712.008, 712.042, and 712.044(b), that the commission by rule adopt fees to defray the cost of enforcing and administering Chapter 712, the cost of examination, and the equitable and proportionate cost of maintenance and operation of the department.

The commission has for a number of years successfully avoided raising assessments--despite inflation and rising program costs, the amount of the annual assessments charged PCC certificate holders has not increased since 2004. The need to now increase assessments is attributable to several factors. The department has had to employ additional examiners in order to complete examinations within the time parameters established by the department's statutorily mandated performance measures. Additionally, the time required to complete on-site PCC examinations has increased because the department must verify compliance with state laws and regulations that have been passed and adopted within the past several years. For example, the department must confirm compliance with the requirement that a PCC timely order and set markers and monuments and respond to consumer complaints.

Based upon the number of PCC certificate holders and the department's experience in examining them and regulating PCCs, the department believes that the annual assessments established by the proposed amendments to §26.1(b) will provide the funding required to administer and enforce Chapter 712 and to do so in a manner that is fair and equitable to all certificate holders. In determining the amount of the proposed assessments,

the department has adhered to the limitation that only such funds as are necessary to defray the cost of enforcing and administering Chapter 712, the cost of examination, and the equitable and proportionate cost of maintenance and operation of the department may be imposed and collected, and that the department is statutorily prohibited from retaining excess revenue.

Consistent with established practice, the department provided each of its 240 PCC certificate holders with a draft of the proposed amendments, along with a letter detailing the certificate holder's anticipated assessment under the proposal, and invited informal comments. One certificate holder submitted comments objecting to the amount of the annual assessment increase.

The assessments provided for in the proposed amendments are established by the commission and not mandated by the Legislature.

Russell Reese, Director of Special Audits, Texas Department of Banking, has determined that for the first five-year period that the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. The total amount of the department's appropriations for all regulatory programs the department administers will remain approximately the same. Only the sources of revenue to enforce and administer Chapter 712 will change.

Mr. Reese has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the proposed amendments will be greater consistency with respect to the calculation of assessments and the more accurate assessment of the perpetual care industry. Additionally, the proposed amendments will enable the department to recover its costs in administering and enforcing Chapter 712. The perpetual care cemetery industry will wholly fund its regulation and, as a result, such regulation will not require the expenditure of public monies from other sources. Mr. Reese has further determined that, for each year of the first five years the proposed amendments to §26.1(b) are in effect, the economic costs to PCC certificate holders will be an average yearly increase in the annual assessment of approximately $423.

Of the department's 240 PCC certificate holders, 142 are micro-businesses, 25 are small businesses, and 73 are large businesses under the definitions of those terms in Government Code, §2006.001. The average annual assessment increase for the micro-businesses under the proposed amendments to §26.1 will be approximately $356, or 0.14601166 per $100 of the PCC certificate holder's total statutory trust fund balance. The average annual assessment increase for the small businesses will be approximately $425, or 0.09536870 per $100 of the total statutory trust fund balance. The average annual assessment increase for the large businesses will be approximately $552, or 0.04046659 per $100 of the total statutory fund balance.

To be considered, comments regarding the proposed amendments must be submitted in writing not later than 30 days after the date of publication of this notice. Comments should be addressed to Russell Reese, Director, Special Audits Division, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294, or by e-mail to Russell.Reese@banking.state.tx.us.

The amendments to §26.1(b) are proposed under the authority of Health and Safety Code, §§712.008, 712.042, and 712.044(b), which authorize the commission to adopt rules providing fees to defray the cost of enforcing and administering Chapter 712, the cost of examination, and the equitable and proportionate cost of maintenance and operation of the department.

Health and Safety Code, Chapter 712, is affected by the proposed amendments.

§26.1. What fees must I pay to operate a perpetual care cemetery?

(a) (No change.)

(b) If I want to operate a perpetual care cemetery, what fees must I pay to the department?

(1) (No change.)

(2) An annual fee must be paid as required by Section 712.042 of the Act. This annual fee is based on your fund balance as reflected on the most recent annual statement of funds report you have filed with the department [~~of the date of your last examination~~]. Your annual fee will be calculated according to the following table:
Figure: 7 TAC §26.1(b)(2) (No change.)

(3) An annual assessment must be paid as an examination fee imposed annually on a perpetual care cemetery corporation to defray the cost of administering the Act as required by Section 712.004(b) of the Act. The amount of your annual assessment is based on your fund balance as reflected on the most recent annual statement of funds report you have filed with the department. You must pay the annual assessment specified in the following table: [~~Your annual assessment is calculated at a rate of $0.0030 per dollar of your fund balance as of the date of your last examination, except that:~~]
Figure: 7 TAC §26.1(b)(3)

[~~(A) If your calculated annual assessment is less than $115, your annual assessment will be $115; or~~]

[~~(B) If your calculated annual assessment is more than $6,400, your annual assessment will be $6,400.~~]

(4) If you are a new certificate holder and have not yet filed your first annual statement of funds report required by Section 712.041 of the Act, you must pay an examination fee of $600 per day for each examiner and all associated travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph (3) of this subsection.

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703702
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: October 19, 2007
For further information, please call: (512) 475-1300

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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 80. MORTGAGE BROKER AND LOAN OFFICER LICENSING

The Finance Commission of Texas ("Finance Commission") proposes to amend the following sections of 7 TAC Chapter

80, Mortgage Broker and Loan Officer Licensing: 7 TAC §80.1 Scope; 7 TAC §80.2 Definitions; 7 TAC §80.3 Licensing--General; 7 TAC §80.4 Qualifications for Obtaining Licenses; 7 TAC §80.5 Renewals; 7 TAC §80.6 Sponsorship and Termination Thereof; 7 TAC §80.7 Background Checks; 7 TAC §80.12 Display of License Certificates, Changes of Address; 7 TAC §80.13 Books and Records; 7 TAC §80.20 Inspections; 7 TAC §80.21 Investigations; 7 TAC §80.23 Annual Reports. These amendments are proposed in order to implement the provisions of HB 2783 and HB 1716 as passed by the 80th Texas Legislature. These bills make substantial modifications to the Mortgage Broker License Act, *Finance Code* Chapter 156 (the "Act") relating to the licensing and regulation of mortgage brokers. In addition, the amendments are being proposed to update language and to respond to evolving regulatory concerns in combating mortgage fraud and predatory lending. Other sections are being amended to streamline administrative functions to better serve the public and the constituents of the regulated community.

Prior to the enactment of HB 2783, only individuals have been licensed as mortgage brokers. New *Finance Code* §156.204(b) requires business entities to be licensed in order to act as a mortgage broker. The proposed amendments to §80.1 Scope substitute the term "person" for the term "individual" in several provisions. The term "person" as used in the Code Construction Act expressly includes business entities as well as natural persons. The use of the term "individual" is retained or added in those places where the provision is intended to apply only to a natural person.

The proposal to amend §80.1(6) reflects the changes to exemptions language in *Finance Code* §156.202 as amended by HB 2783 and HB 1716. Currently, persons who finance property which they own and sell are not required to be licensed. Under *Finance Code* §156.202 as amended by HB 2783, the exemption will now apply only to owners who make no more than five such loans in any 12-month period. HB 1716 creates an exemption from licensing for exclusive agents of registered financial services companies. The proposed amendments incorporate this new exemption in proposed §80.1(6)(vi).

The proposed amendments to §80.2(1) and (4) reflect the change to the agency name made in the 2005 legislative session from the Savings and Loan Department to Department of Savings and Mortgage Lending. The proposed amendment to the definition of a mortgage loan in §80.2(5) conforms the definition to *Finance Code* §156.002(10) as amended by HB 2783 by eliminating the word "first." This modification expands the definition of mortgage loans to include all residential mortgage loans regardless of their priority. HB 2783 provides that licensed mortgage brokers will no longer be required to have a separate Chapter 342 license to originate second lien loans with interest greater than 10 percent and designates the Savings and Mortgage Lending Commissioner as the officer responsible for overseeing Chapter 342 loans originated by licensed mortgage brokers. The proposed amendment to the definition of "mortgage banker" in §80.2(7) by adding the word "unconditional" is intended to clarify the definition of direct endorsement authority for HUD-authorized originators. The proposed amendment to the definition of a "physical office" in §80.2(9) is intended to more clearly describe the manner of posting business hours for offices which may be located in shared facilities, such as an executive office suite arrangement, or when a mortgage broker operates out of his or her residence. The amendment further requires that a licensee provide on-site staff during all posted hours of business. These amendments are intended to insure that consumers know when the mortgage originator is open for walk-in traffic and that assistance will be available during those hours. The proposed amendments to the definition of criminal offense in §80.2(13) reflect the current definition that the Department of Savings and Mortgage Lending considers criminal offenses related to the business of a mortgage broker. The Commissioner believes that non-financial related offenses, such as drug dealing and crimes involving weapons pose danger to the public at large and to consumers in particular. Further, the Commissioner believes that a pattern of misdemeanor convictions may evidence such disregard for authority as to cause concern that the person would be more likely to disregard laws regulating mortgage lending, therefore placing consumers at risk. The proposed amendments simply formalize the approach the Commissioner and Department have taken in dealing with these types of offenses.

The proposed amendments to §80.3(a) eliminate the language that only individuals may be licensed, consistent with the new statutory provisions for entity licensing. Additionally, the proposed amendments clarify the application procedure and more accurately reflect current processes. The proposed amendments to §80.3(b) for provisional licenses reflect changes mandated by new *Finance Code* §156.2011 relating to provisional licensing for those persons with recent experience as loan officers with exempt entities. The intent is to provide an expedited license process for these persons as they move from exempt entities to a licensed activity. The proposed amendments to §80.3 add a new subsection (c) which brings together in one subsection the provisions on license application fees and how they are established.

The proposed amendments to §80.4 conform the rule to the amended language in *Finance Code* §156.202 as amended by HB 2783. The proposed amendment also clarifies the requirements for acceptable surety bonds which may be used in lieu of the mortgage broker net worth requirements. New subsection (c) provides for entity licensing as required by HB 2783. The statutory change did not specifically address whether the entity must independently meet the financial requirements of a mortgage broker. The proposed amendment provides that an entity will be deemed to satisfy the net worth requirement so long as the mortgage broker serving as the designated representative meets the requirement.

The proposed amendments to §80.5 update and correct internal statutory citations, and update and clarify the procedures for license renewals. The proposed amendments also update the grounds for denying a renewal to conform to the statutory provisions found in amended *Finance Code* §156.208. Proposed §80.5(b)(3) provides that a person may be denied for engaging in conduct which reflects a lack of trustworthiness, integrity, or honesty. The Department considers this to be consistent with the amended statutory language which provides for denial of a license if the licensee has engaged in activity which would have been grounds for denial of an original license. For example, if a person is found civilly liable for damages arising from non-mortgage related fraudulent business practices, the Department would consider that to reflect on the individual's trustworthiness or integrity, and it would be grounds for denial of an original license. Therefore, if the act is committed by a current licensee, the act should be considered as grounds for denial of the renewal. The proposed amendments to §80.5(c) remove outdated language and provide for the option of establishing staggered license renewal dates for entity licenses.

The proposed amendments to §80.6 update the names of currently used forms. The amendments provide that loan officers may be sponsored by either the licensed entity or by an individual mortgage broker. This option provides flexibility to the newly licensed entities as to how loan officers may be sponsored, and is considered especially favorable to providing flexibility to small business operations.

The proposed amendments to §80.7 provide that the process for criminal background checks for exclusive agents of registered financial services companies will be that used for licensees. This amendment is proposed to implement the provisions of HB 1716. The proposal also updates existing language to incorporate the use of fingerprint scans in addition to cards and reflects the Department's use of this new technology.

The proposed amendments to §80.12 are intended to eliminate the need for the issuance of a paper license. As proposed, license verification certificates will be provided online and may be downloaded and printed for display. In addition, the proposed amendments update §80.12 to conform to amendments to *Finance Code* §156.211 which provide for notice to the Department and payment of fees for name changes, address changes, and notice of use of assumed names.

The proposed amendment to §80.13(1)(A) adds a new provision to require that licensees retain a copy of the notice to be given to applicants under *Finance Code* §343.105. This new statutory provision requires a notice to be signed by mortgage applicants advising them of the possible criminal consequences of making a misrepresentation in connection with a loan application. It is part of the 80th Texas Legislature's mortgage fraud prevention initiative in HB 716 authored by Representative Solomons.

The proposed amendments to §80.20 provide that advance notice of an inspection of a licensee need not be given when the Department believes the advance notice would compromise the inspection by providing an opportunity for a licensee to purge files or otherwise obstruct the examination of records. This is of particular concern when the Department has reason to suspect that the licensee is engaged in mortgage fraud. The amendment also provides that e-mail may be used when advance notice is given. This reflects the broad current use of e-mail as a primary means of communication for many persons.

The proposed amendments to §80.21 are intended as implementation provisions for entity licensing. The language is modeled on similar provisions found in the regulations of real estate licenses subject to jurisdiction of the Texas Real Estate Commission. The language provides that the designated representative of a licensed entity is individually responsible for the acts of loan officers acting on behalf of the entity.

The proposed amendments to §80.23 establish by rule a fixed annual date for the filing of annual reports. Traditionally, the Commissioner has announced the date on an annual basis as the last business day of February. This proposal eliminates the need for the Commissioner to establish the date each year, and it provides greater direction to the regulated community.

The Act establishes a Mortgage Broker Advisory Committee to advise the Commissioner and the Finance Commission on the promulgation of forms and regulations and the implementation of the Act. The advisory committee met on July 18, 2007, and discussed the proposed amendments. The amendments as presented to the Finance Commission were recommended for publication by a unanimous vote of the advisory committee.

Danny Payne, Commissioner of the Department of Savings and Mortgage Lending, has determined that for the first five-year period the proposed amended sections, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering these sections, and they will add equal amounts of revenue and costs to the Department.

Mr. Payne estimates that for the first-five year period the proposed amended sections are in effect, the public will benefit by strengthening the qualifications required to obtain a license; subjecting business entities to heightened accountability; and enhancing the Department's ability to inspect mortgage brokers. This will further the ability of the Department to detect and enforce violations of the Act, and provide improved consumer protection. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the amended sections.

Comments on the proposed amendments may be submitted in writing to Danny Payne, Commissioner, Texas Savings and Mortgage Lending Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294 or e-mailed to sml-info@sml.state.tx.us, no later than 30 days from the date these proposed rules are published in the *Texas Register*.

SUBCHAPTER A. LICENSING

7 TAC §§80.1 - 80.7

The amended sections are proposed under *Finance Code*, §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, §156.102(a) and (b), which authorize the Commissioner of the Texas Savings and Mortgage Lending Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is *Finance Code*, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The proposed amendments relate to the following sections of the *Finance Code*: §156.002; 156.2011; 156.202; 156.204; 156.208; 156.211; 156.214; 343.103; and 343.105.

§80.1. Scope.

This Chapter governs the licensing and conduct of Mortgage Brokers, and the Loan Officers working for them, under the Act.

(1) As used herein the term "Mortgage Broker" means a person [~~an individual~~] who receives an application from a prospective borrower to attempt to obtain a Mortgage Loan. A person [~~An individual~~] is a "Mortgage Broker" even if the person [~~individual~~] is not exclusively engaged in the activities of a Mortgage Broker.

(2) As used herein, the term "Loan Officer" means an individual required to be sponsored by a licensed Mortgage Broker for the purposes of performing the acts of a Mortgage Broker.

(3) The terms Mortgage Broker and Loan Officer do not include:

(A) An individual who performs only clerical functions in connection with the obtaining, compiling, or delivery of an application for a Mortgage Loan; or

(B) An individual functioning solely as a Mortgage Loan processor performing those duties listed in *Finance Code* §156.002(6).

(4) A person [~~An individual~~] is required to be licensed under the Act if:

(A) The person [~~individual~~], acting alone or in concert with others, receives a mortgage loan application and performs any one of the following activities:

(i) Advises a prospective borrower about the different type of loan products available, or advises a prospective borrower how closing costs and monthly payments could vary under each product; or

(ii) Consults or discusses with a prospective borrower about the maximum amount of the mortgage a prospective borrower can afford; or

(iii) Provides disclosures to a prospective borrower or discusses or explains such disclosures. Disclosures include but are not limited to the mortgage broker disclosure form; truth in lending disclosures, the good faith estimate of settlement costs, affiliated business arrangements; and disclosures relating to the dual role as mortgage broker and loan officer and real estate broker or sales agent. An individual who prepares a required disclosure under the direction and supervision of a licensed loan officer or licensed mortgage broker, but who does not discuss the disclosure with a prospective borrower shall not be deemed to have provided a disclosure for purposes of this subsection; or

(iv) Determines the lender(s) or investor(s) to whom the loan will be submitted; or

(v) Issues or signs a prequalification letter or preapproval letter; or

(B) the individual represents or holds himself out as a "loan officer," "mortgage consultant," or "mortgage broker", or otherwise represents that the person is engaging in or conducting the business of originating mortgage loans.

(5) An individual who is a licensed real estate agent or real estate broker, and who only provides general information relating to activities described in paragraph (4)(A)(i) and (4)(A)(ii) is not required to be licensed provided that such individual receives no additional compensation for providing such services.

(6) Exemptions.

(A) The following business entities are exempt from the Act and this Chapter, and the Employees, as defined in paragraph (11) of §80.2 of this Chapter (relating to Definitions), of such entities are also exempt from the Act and this Chapter to the extent they are working for the benefit of their employer:

(i) a bank, savings bank, or savings association and any subsidiary or affiliate of any of the foregoing;

(ii) a state or federal credit union;

(iii) an [~~in~~] insurance company licensed or authorized to do business in the State of Texas;

(iv) a Mortgage Banker; or

(v) an organization that qualifies for an exemption from state franchise and sales taxes by virtue of its status under §501(c)(3) of the *Internal Revenue Code*, as amended.

(vi) an individual who is an exclusive agent of a registered financial services company under a written agreement prohibiting the individual from soliciting, processing, negotiating, or placing a mortgage loan with a person other than the registered financial services company or an affiliate of that company.

(vii) [~~(vi)~~] An Employee is presumed to be working for the benefit of his or her employer with respect to a Mortgage Loan if when the Mortgage Loan is made it is closed at the direction of the employer or the employer directly shares in the economic gain or loss of the Mortgage Loan transaction.

(B) The following persons [~~individuals~~] are exempt from the Act and this Chapter:

(i) an individual who makes a Mortgage Loan from the individual's own funds to a spouse, former spouse, or person or persons in the lineal line of consanguinity of the person making such Mortgage Loan;

(ii) an owner of real property who in any 12-consecutive-month period makes no more than five [~~makes a~~] Mortgage Loans [~~Loan~~] to purchasers [~~a purchaser~~] of the real property for all or a part of the purchase price of that same real property; or [~~and~~]

(iii) an individual who makes a Mortgage Loan from that individual's own funds who is not and is not required, by virtue of his or her business, to be an authorized lender under Chapter 342, *Finance Code*, and does not regularly engage in the business of making or brokering Mortgage Loans. For purposes of this subsection, a person is deemed to be regularly engaging in the business of making or brokering Mortgage Loans if that person:

(I) advertises or holds himself out to be engaged in the business of making or brokering mortgage loans; or

(II) originates or brokers more than one mortgage loan in any one calendar quarter.

§80.2. Definitions.

As used in this Chapter, the following terms have the meanings indicated:

(1) "Commissioner" means the Commissioner of the Department of Savings and Mortgage Lending [~~Savings and Loan Commissioner of the State of Texas~~].

(2) "Commissioner's designee" means an employee of the Department performing his or her assigned duties or such other person as the Commissioner may designate in writing. A Commissioner's designee is deemed to be the Commissioner's authorized "personnel or representative" as such term is used in the Act.

(3) "Commission" means the Finance Commission of the State of Texas.

(4) "Department" means the Department of Savings and Mortgage Lending [~~Texas Savings and Loan Department~~].

(5) "Mortgage Loan" means any indebtedness secured by a [~~first~~] lien against, or security interest in, one-to-four family residential real property when the property is intended to be occupied for residential purposes whether or not the property is acquired for investment purposes or acquired for owner occupancy. It includes new loans and renewals, extensions, modifications, and rearrangements of such loans. The term does not include a loan which is secured by a structure that is suitable for occupancy as a one-to-four [~~one to four~~] family residence, but is used for a commercial purpose such as a professional office, beauty salon, or other non-residential [~~nonresidential~~] use, and is not used as a residence.

(6) "One-to-four family residential real property" means improved or unimproved real property, or any portion of or interest

in any such real property, on which a one-to-four family dwelling, including a manufactured home, is, is being or is to be constructed or situated.

(7) "Mortgage Banker" means a person who is:

(A) approved or authorized by the United States Department of Housing and Urban Development as a mortgagee, for Mortgage Loans as defined in this Chapter, with unconditional direct endorsement underwriting authority;

(B) an approved seller or servicer under the Federal National Mortgage Association;

(C) an approved seller or servicer under the Federal Home Loan Mortgage Corporation; or

(D) an approved issuer for the Government National Mortgage Association.

(8) "Mortgage Applicant" means any person who is solicited to use or uses a Mortgage Broker, directly or through a Mortgage Broker's Loan Officer, to obtain a Mortgage Loan.

(9) "Physical Office" means an actual office where the business of mortgage lending and/or the business of taking or soliciting Mortgage Loan applications is conducted. It must have a street address. A post office box or other similar designation will not suffice. It must be accessible to the general public as a place of business and must hold itself open on a regular basis during posted hours. The posted hours of business must be posted in a manner to give effective notice to walk-up traffic as to the hours of opening and closing. Normally this will require posting of the hours on an exterior door or window of the office. In those instances where the physical office is in a shared office suite or building, the hours may be posted in a common lobby or reception area. During the hours in which the physical office is open, at least one staff member must be present to assist customers. The physical office of a Mortgage Broker or a Loan Officer need not be the location at which such person's required records are maintained, but the location at which such required records are maintained must be accessible to the Commissioner or the Commissioner's designee for inspection during normal business hours.

(10) "Branch office" means any location at which a Mortgage Broker, acting directly or through one or more Loan Officers, solicits or receives applications for Mortgage Loans. A branch office includes any location at which a Mortgage Broker (or a Loan Officer acting on behalf of a Mortgage Officer) owns, leases, operates, maintains, or staffs a computer or other similar electronic device by means of which a consumer may make application for a Mortgage Loan.

(11) "Employee" means, with respect to an individual working for a business entity, any individual whom the business entity has elected to treat as an employee for federal income tax and FICA withholding purposes.

(12) "Recovery Fund" means the Mortgage Broker Recovery Fund established and administered in accordance with Subchapter F of the Act.

(13) "Criminal Offense" means any violation of any state or federal criminal statute which:

(A) involves theft, misappropriation, or misapplication, of monies or goods in any amount;

(B) involves the falsification of records, perjury, or other similar criminal offenses indicating dishonesty;

(C) involves the taking of bribes, kickbacks, or other illegal compensation;

(D) involves deceiving the public by means of swindling, false advertising or the like;

(E) involves acts of moral turpitude and violation of duties owed to the public including, but not limited to, the unlawful manufacture, distribution, or trafficking in a controlled substance, dangerous drug, or marijuana;

(F) involves acts of violence or use of a deadly weapon;

(G) when considered in connection with several other violations committed by the same person over a period of time forms part of a pattern showing a lack of respect for, disregard for, or, apparent inability to follow, the criminal law; or

(H) [~~(E)~~] involves any other crime which the Commissioner determines has a reasonable relationship to whether a person is fit to serve as a Mortgage Broker or Loan Officer in a manner consistent with the purposes of the Act and the best interest of the State of Texas and its residents.

§80.3. Licensing--general.

(a) Applications for a Mortgage Broker License or Loan Officer license must be submitted on the current application forms promulgated by the Commissioner from time to time. Current application forms will be made available on the Department's website in a format which can be downloaded and printed. An application, notice, or any other filing with the Department will only be deemed submitted if it is complete. A filing is complete only if all required supporting documentation is included and only if all required fees have been received by the Department. If an applicant fails to provide to the Department any information or supplemental documentation within 30 days from the date of request, the application may be deemed withdrawn. Except as otherwise specifically provided in these rules, a Mortgage Broker license or Loan Officer license shall be valid for a period of two years from the date of issuance. [~~Only individuals may apply for and obtain Mortgage Broker or Loan Officer licenses. Entities other than individuals may not be licensed under the Act and this Chapter. All applications for Mortgage Broker or Loan Officer licenses are to be submitted on the current version(s) of forms promulgated by the Commissioner, including the forms for attachments. No application or notice required under the Act or these regulations is deemed to be submitted until the required fee has been received by the Department. Such fees are not refundable. A license issued pursuant to the Act is valid for a period of two years or, in the instance of a provisional or probationary license, such shorter period as the Commissioner may specify. The Commissioner's schedule of fees is Appendix A to this Chapter. If an application is submitted and the Commissioner or the Commissioner's designee requests additional, clarifying, or supplemental information, failure to provide such requested information within thirty days may result in the application being returned and deemed withdrawn.~~]

(b) Provisional Licenses

(1) If the Commissioner determines that the completion of an application for a license required by the Act will be delayed significantly due to the need for additional information to render the application complete and the Commissioner has determined that there is no reason to believe, based on the facts and circumstances known, that the application will be denied, the Commissioner may, in his or her sole discretion, issue a provisional license. A provisional license issued under this paragraph:

(A) may contain such limitations and restrictions as the Commissioner determines are reasonably necessary or appropriate to further the purposes of the Act;

(B) is subject to revocation for any of the grounds set forth in §[~~Section~~] 156.303 of the Act; and

(C) is subject to revocation if the Commissioner determines that any facts or circumstances exist which would have constituted grounds for denial of the application.

(2) If an applicant for a loan officer license has been employed as a loan officer for at least 18 months of the 20 months immediately preceding the date of the application by a person exempt from the Act under §156.202, the applicant may be granted a 90 day provisional license as provided in this subdivision:

(A) The applicant must meet the qualifications for a loan officer license, other than the educational and examination requirements.

(B) The applicant must pay a non-refundable $100 expedited processing fee in addition to the fee for regular license.

(C) No extension of the provisional license will be granted. Unless the applicant has met all of the requirements for a regular license, including the educational and testing requirements, and the license has been issued, the provisional license will expire at the end of the 90 day period.

(D) The Commissioner shall use best efforts to issue the provisional loan officer license on or before the later of:

(i) the 10th business day after the date of receipt of a completed application; or

(ii) the second business day after the date of receipt of the criminal background information required under §156.206 of the Act, demonstrating that the applicant has no pending criminal charges and has not been convicted of a criminal offense. A person is considered convicted as provided by §156.204(d) of the Act.

(E) The Commissioner may revoke a provisional loan officer license if the Commissioner discovers that the applicant has made a misrepresentation relating to the applicant's qualifications for a loan officer license, has violated this chapter, or does not meet the qualifications for a provisional loan officer license. The revocation of a provisional loan officer license is not subject to appeal.

(3) [~~(2)~~] The holder of a provisional license shall be required, while operating under such provisional license, to comply with all requirements of the Act as if he or she were the holder of a license, including, but not limited to, display of his or her provisional license.

(c) The fees for the application or for the renewal of a mortgage broker license or loan officer license shall be established by the Commissioner. The amount of the fees may be modified upon not less than 30 days advance notice posted on the Department's website. Fees are nonrefundable and nontransferable.

§80.4. Qualifications for obtaining licenses.

(a) Individual Mortgage Broker Licenses. In order to be issued a license as a Mortgage Broker, an individual applicant, [~~the applicant~~] must establish to the satisfaction of the Commissioner that:

(1) the applicant is an individual of at least 18 years of age;

(2) the applicant is either a United States citizen or a lawfully admitted alien;

(3) the applicant maintains a Physical Office in the State of Texas and has designated that office in his or her application;

(4) the applicant either:

(A) has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university AND has 18 months or more of actual experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a licensed mortgage broker or licensed loan officer or with a person exempt under §156.202 of the Act;

(B) is currently licensed in the State of Texas as:

(i) an active real estate broker;

(ii) an active attorney; or

(iii) a local recording agent or insurance agent for a legal reserve life insurance company under Chapter 21 of the Insurance Code (or holds an equivalent license under the Insurance Code or its equivalent regulations as now or hereafter promulgated); or

(C) has three years or more experience in the mortgage lending field as evidenced by documentary proof of full-time employment for the required period as a loan officer or with a person exempt under §[~~Section~~] 156.202 of the Act;

(5) the applicant either has net assets of $25,000 or more (which must be maintained while the license is in effect) or the applicant has provided to the Commissioner a surety bond in an amount of not less than $50,000 issued by a surety company authorized to do business in the State of Texas by the Texas Department of Insurance. The bond shall be issued for the full term of the license and may not be cancelled for any reason during the term of the license. The surety bond shall be for the benefit of the Commissioner and any consumer aggrieved by the actions of a licensee. The bond shall be issued on a form approved by the Department. [~~has provided an acceptable surety bond in an amount of not less than $50,000 (an acceptable bond being a bond issued by a surety licensed by the Texas Department of Insurance and issued on a form approved by the Texas Department of Insurance for that purpose);~~]

(6) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §80.2 (relating to Definitions) of this Chapter or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Commissioner, in accordance with §[~~Section~~] 53.023, Occupations Code, to be fit to be licensed as a Mortgage Broker;

(7) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of a mortgage broker;

(8) the applicant is of good moral character, including honesty, trustworthiness, and integrity; [~~and~~]

(9) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this Chapter or any order previously issued to the applicant by the Commissioner; and

(10) provide the Commissioner with satisfactory evidence that:

(A) if the person has not been previously licensed as a mortgage broker or a loan officer under this subchapter, the person has completed 90 classroom hours of education courses approved by the Commissioner under this section; or

(B) if the person has not been previously licensed as a mortgage broker under this subchapter but has been licensed as a loan officer under this subchapter, the person has successfully completed an additional 30 classroom hours of education courses approved by the Commissioner under this section.

(b) Loan Officer Licenses. In order to be issued a license as a Loan Officer, an applicant must establish to the satisfaction of the Commissioner that:

(1) the applicant is an individual of at least 18 years of age;

(2) the applicant is either a United States citizen or a lawfully admitted alien;

(3) the applicant is sponsored by a licensed Mortgage Broker, as evidenced by an appropriately completed Loan Officer Sponsor Certification form;

(4) the applicant has either:

(A) successfully completed at least 60 [~~15~~] hours of education courses approved by the Commissioner; or

(B) successfully completed 30 hours of education courses approved by the Commissioner if the applicant:

(i) has 18 months or more of experience as a mortgage loan officer as evidenced by documentary proof of full-time employment as a mortgage loan officer with a person exempt under §156.202 of the Act; or

(ii) is a person who meets the qualifications of §80.4(a)(4)(B).

[~~(B) the applicant has 18 months or more of experience as a mortgage loan officer as evidenced by documentary proof of full-time employment as such with a mortgage broker or a person exempt under Section 156.202 of the Act; or~~]

[~~(C) the applicant is otherwise qualified to be a Mortgage Broker;~~]

(5) the applicant has not been convicted of any Criminal Offense as defined in paragraph (13) of §[~~(~~]80.2 of this Chapter (relating to Definitions) or, if the applicant has been convicted of any such Criminal Offense, the applicant has been found by the Commissioner, in accordance with §[~~Section~~] 53.023, Occupations Code, to be fit to be licensed as a Loan Officer;

(6) the applicant has passed an examination approved by the Finance Commission that demonstrates knowledge of the mortgage industry and the role and responsibilities of mortgage brokers;

(7) the applicant is of good moral character, including honesty, trustworthiness, and integrity; and

(8) the applicant is not in violation of the Mortgage Broker License Act, a rule adopted under this Chapter or any order previously issued to the applicant by the Commissioner.

(c) Entity Mortgage Broker Licenses. A corporation, limited liability company, or limited partnership may not act as a mortgage broker unless the entity obtains a mortgage broker license. To be eligible to obtain a mortgage broker license the entity must:

(1) designate an individual licensed as a mortgage broker as its designated representative. The designated representative must be:

(A) an officer of the corporation if the entity is a corporation;

(B) a manager of the limited liability company if the entity is a limited liability company; or

(C) if the entity is a limited partnership:

(i) an individual who is a general partner;

(ii) an officer of a general partner that is a corporation; or

(iii) a manager of a general partner that is a limited liability company.

(2) demonstrate to the satisfaction of the Commissioner that the applicant meets the minimum net worth requirements for a mortgage broker or prove to the Commissioner a surety bond in an amount not less than $50,000 as provided in subsection (a)(5) of this section. In the alternative, the Commissioner will accept evidence that mortgage broker who is the designated representative meets the minimum net worth requirements for a mortgage broker.

(d) Designated representative. A mortgage broker may not act as a designated representative at any time while the broker's license is inactive, expired, suspended or revoked.

(e) [~~(c)~~] Additional Information. The Commissioner may require such additional, clarifying, or supplemental information from any applicant for the issuance or renewal of any license pursuant to the Act as is deemed necessary or advisable to determine that the requirements of the Act have been met.

§80.5. Renewals.

(a) A license may be renewed upon:

(1) submission of a completed application for renewal on the prescribed form (together with any requested additional, clarifying, or supplemental information) together with the payment of the applicable renewal application fee; [~~and~~]

(2) providing the Commissioner with satisfactory evidence of compliance with the applicable educational requirements or licensing requirements specified in *Finance Code* §156.208; and [~~§156.204 of the Act and §80.4 of this Chapter (relating to Qualifications for Obtaining Licenses).~~]

(3) with respect to mortgage broker license renewals, the mortgage broker:

(A) provides the Commissioner with satisfactory evidence that the license holder meets minimum net assets requirements contained in *Finance Code* §156.205; or

(B) submits to the Commissioner a surety bond issued by a surety authorized to do business in the State of Texas by the Texas Department of Insurance in an amount of not less than $50,000. The bond shall be issued for the full term of the license and may not be cancelled for any reason during the term of the license. The surety bond shall be for the benefit of the Commissioner and any consumer aggrieved by the actions of a licensee. The bond shall be issued on a form approved by the Department of Savings and Mortgage Lending.

(b) A renewal of a license may be denied if: [~~not be renewed if the license holder has been convicted of a Criminal Offense, as defined in paragraph (13) of §80.2 of this Chapter (relating to Definitions) unless the Commissioner finds, pursuant to §4(c) of Article 6252-13c of the Texas Civil Statutes, to be fit to be licensed as a Mortgage Broker or Loan Officer.~~]

(1) the license holder has been convicted of a criminal offense the Commissioner determines is directly related to the occupation of a mortgage broker or loan officer as provided by Chapter 53 of the Occupations Code;

(2) the license holder is in violation of the Act, this Chapter, or an order of the Commissioner;

(3) the license holder has engaged in conduct evidencing the licensee's lack of good moral character, including the licensee's honesty, trustworthiness, or integrity; or

(4) any other ground provided by statute or this Chapter.

(c) THIS SUBSECTION APPLIES ONLY TO ENTITY LICENSES ISSUED UNDER §80.4 (c) THAT EXPIRE DURING THE

PERIOD OF DECEMBER 1, 2009 THROUGH MARCH 31, 2010. [THIS SUBSECTION (c) APPLIES ONLY TO LICENSES THAT EXPIRE IN THE PERIOD OF DECEMBER 1, 2001, THROUGH MARCH 31, 2002. Mortgage Broker and Loan Officer licenses that expire during the period of December 1, 2001, and March 31, 2002, will not be issued for the usual two-year period.] Pursuant to §156.208(f) of the Act, these licenses will be assigned a different expiration date in order to spread more evenly license renewals throughout the year. The initial renewal for an entity mortgage broker license to which this subsection applies will be for a term which expires on the expiration date of the license of the mortgage broker who is the designated representative of the entity on the date of renewal. For instance, if the entity license expires on December 15, 2009, and the license of the designated representative expires on May 15, 2010, the initial renewal license shall be for a period beginning on the renewal date and expiring on May 15, 2010. If the license of the designated representative expires during the period covered in this subsection, the licenses may be renewed simultaneously and the renewal will be for a full two-year term. The renewal fee for a renewal term of less than two years shall be prorated by multiplying the renewal fee times a fraction the numerator of which shall be the number of months during the renewal term (rounded to the next highest number of months with respect to a partial month), and the denominator shall be 24. If the prorated amount calculated in this subsection is other than a whole dollar amount, the renewal fee shall be rounded to the closest whole dollar. [The adjusted expiration date on these licenses will be determined by the last two digits of the license number. Licenses will expire on the same day of the month as the current license, or if a change in the month of expiration makes this impossible, the next preceding day. The last digit will determine the month in which the license expires, 1 corresponding to January, 2 corresponding to February, and so on. The next to last digit of the license number will determine the year in which the license will expire. If the next to last digit is an even number, the license will expire in an even numbered year (2002, 2004, etc.). If the next to last digit is an odd number, the license will expire in an odd numbered year (2003, 2005, etc.). For licenses renewing after the effective date of this system, the term of the initial renewal may, depending on the last two digits of the license number, be for a period of not less than nine months but not more than thirty months. License renewal fees and continuing education requirements will be prorated on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. For example, if license number 1234 expires on December 27, 2001, it will be issued with an expiration date of April 27, 2003. Once a license has been renewed so that it will expire at a date determined by the license number, subsequent renewals will be for a two-year period. Nothing herein will limit the ability of the Commissioner to issue probationary or provisional licenses for terms of less than twenty-four months.]

§80.6. Sponsorship and termination thereof.

(a) An applicant for a Loan Officer license must be sponsored by a licensed Mortgage Broker. A Loan Officer may not be sponsored by or act for more than one Mortgage Broker at any given time. The Mortgage Broker must acknowledge and accept the responsibilities set forth in the Act, including responsibility for the actions of the Loan Officer, by executing and providing to the Commissioner a Loan Officer Sponsor Certification form [an Acknowledgment of Sponsoring Broker form].

(b) If a Loan Officer's license is approved, it will be issued to and must be held by the Sponsoring Mortgage Broker and displayed at the office of the sponsoring Mortgage Broker as specified on the Mortgage Broker's license.

(c) If sponsorship of a Loan Officer terminates, the sponsoring Mortgage Broker and the Loan Officer shall immediately notify the Commissioner, and the sponsoring Mortgage Broker shall return the Loan Officer's license to the Commissioner or the Commissioner's Designee, whereupon that license will become inactive. Sponsorship of a Loan Officer remains in effect until the Commissioner has been notified in writing of the termination of sponsorship [AND the Loan Officer's license is received by the Commissioner or the Commissioner's Designee]. Prior to its scheduled expiration, an inactive Loan Officer's license may be reactivated upon designation of a new sponsoring Mortgage Broker, as evidenced by execution and providing to the Commissioner of a Loan Officer Sponsor Certification form [an Acknowledgement of Sponsoring Broker form].

(d) Loan officers affiliated with an entity which is licensed as a mortgage broker may be sponsored by the entity or an individual mortgage broker which is affiliated with and does business solely on behalf of the entity.

§80.7. Background checks.

(a) In connection with each application for the issuance of a license to an individual under the Act, the Commissioner shall initiate a background check by obtaining a criminal history on the applicant from the Federal Bureau of Investigation and Department of Public Safety and shall require a fingerprint card or scan and authorization for such additional background checks as the Commissioner may deem necessary or advisable.

(b) The Commissioner shall keep confidential any criminal background information obtained under this subsection and §[subsection] 156.206 of the Act and may not release or disclose the information unless:

(1) the information is a public record at the time the Commissioner obtains the information; or

(2) the Commissioner releases the information:

(A) under order from a court;

(B) with the permission of the applicant;

(C) to a person through whom the applicant is conducting or will conduct business; or

(D) to a governmental agency.

(c) Notwithstanding subsection (b) of this section, criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

(d) The provisions of this section shall apply to the background check to be conducted by the Commissioner for exclusive agents of registered financial services companies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703754
John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 475-1352

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SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §80.12, §80.13

The amended sections are proposed under *Finance Code*, §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, §156.102(a) and (b), which authorize the Commissioner of the Texas Savings and Mortgage Lending Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is *Finance Code*, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The proposed amendments relate to the following sections of the *Finance Code*: §156.002; 156.2011; 156.202; 156.204; 156.208; 156.211; 156.214; 343.103; and 343.105.

§80.12. Display of license Verification; License Record Changes [~~certificates; change of address~~].

(a) Each application for a license under the Act requires the applicant to indicate the location(s) at which he or she proposes to conduct the licensed activity. A separate license record is required for each specified location. When issued, each license will indicate the location for which it is issued.

(b) Each required license issued pursuant to the Act and this Chapter must be prominently displayed at the location indicated thereon. A Verification of Licensure document will be made available for download and printing on the Department's website. With respect to any such licensed location which is primarily a computer or similar electronic device, if it is not reasonably possible to display any and all required licenses at such location, the person(s) responsible for complying with the requirement for displaying required licenses may comply with such requirement by setting forth the information specified in their license and causing it to be conspicuously displayed on the first computer screen viewed by a prospective Mortgage Applicant after accessing such computer or similar electronic device. If, due to the number of persons required to display such information, more than one screen is required, sequentially accessed screens following the first screen accessed will be deemed to comply with this requirement.

(c) Before the tenth day preceding the effective date of any change in address, a Mortgage Broker shall notify the Commissioner in writing of the proposed new address of that Mortgage Broker or, as applicable, a Loan Officer sponsored by that Mortgage Broker. The request shall be on the form promulgated by the Commissioner and include a $25 processing fee. Prior to conducting business at the new address, the licensee must confirm that the address change has been processed, and must download from the Department's website, print and post the amended Verification of Licensure for each licensee doing business from the new address. [~~A new license certificate, reflecting the new address, must be obtained prior to a Mortgage Broker or Loan Officer conducting business at a new address.~~]

(d) Before the tenth day following the effective date of any personal name change, a licensee shall notify the Commissioner in writing of the new personal name. The request shall be on the form promulgated by the Commissioner and include supporting documentation as well as a $25 processing fee. Prior to conducting business using the new name, the licensee must confirm that the name change has been processed, and must download from the Department's website, print and post the amended Verification of Licensure for each licensee using the new name.

(e) Before the tenth day preceding the effective date of a new or changed assumed name or DBA, a licensee shall notify the Commissioner in writing of the new name. The request shall be on the form promulgated by the Commissioner and include supporting documentation as well as a $25 processing fee. Prior to conducting business using the new or amended assumed name, the licensee must confirm that the assumed name has been processed, and must download from the Department's website, print and post the amended Verification of Licensure for each licensee using the new or amended assumed name.

§80.13. Books and records.

In order to assure that each licensee will have all records necessary to enable the Commissioner or the Commissioner's designee to investigate complaints and discharge their responsibilities under the Act and this Chapter, each Mortgage Broker and Loan Officer shall maintain records as set forth below. The particular format of records to be maintained is not specified. However, they must be complete, current, legible, readily accessible, and readily sortable. Records maintained for other purposes, such as compliance with other state and federal laws, will be deemed to satisfy these requirements if they include the same information.

(1) Mortgage Application Records. Each Mortgage Broker and each Loan Officer is required to maintain, at the location specified in his or her application, the following books and records:

(A) A Mortgage Loan file for each Mortgage Loan application received; each such file shall contain at least the following:

(i) a copy of the Mortgage Loan application (including any attachments, supplements, or addenda thereto);

(ii) either a copy of the signed closing statement if the Mortgage Loan is closed in the name of the Mortgage Broker or an entity through which the Mortgage Broker is providing mortgage lending services or documentation of the timely denial or other disposition of the application for a Mortgage Loan;

(iii) a copy of the disclosure statement required by the Act and subsection (a) of §[~~Section~~] 80.9 of this Chapter (relating to Required Disclosures);

(iv) a copy of each item of correspondence, each evidence of any contractual arrangement or understanding (including, but not limited to, any interest rate lock-ins or loan commitments), and all notes and memoranda of conversations or meetings with any Mortgage Applicant or any other party in connection with that Mortgage Loan application or its ultimate disposition.

(v) a copy of the notice to applicants required by *Finance Code* §343.105.

(B) - (C) (No change.)

(2) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
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SUBCHAPTER I. INSPECTIONS AND INVESTIGATIONS

7 TAC §80.20, §80.21

The amended sections are proposed under *Finance Code*, §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, §156.102(a) and (b), which authorize the Commissioner of the Texas Savings and Mortgage Lending Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is *Finance Code*, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The proposed amendments relate to the following sections of the *Finance Code*: §156.002; 156.2011; 156.202; 156.204; 156.208; 156.211; 156.214; 343.103; and 343.105.

§80.20. Inspections.

(a) The Commissioner, operating through the Department staff and such others as the Commissioner may, from time to time, designate will conduct periodic inspections of mortgage broker and loan officer licensees as the Commissioner deems necessary.

(b) Except when the Department determines that giving advance notice would impair the inspection, the [~~The~~] Department will give licensees advance notice of each inspection. Such notice will be sent to the licensee's address of record or e-mail address on file with the Department and will specify the date on which the Department's inspectors are scheduled to arrive at the licensee's office. Failure of the licensee to actually receive the notice will not be grounds for delay or postponement of the inspection. The notice will include a list of the documents and records the licensee should have available for the inspector to review.

(c) Inspections will be conducted to determine compliance with the Act and will specifically address whether:

(1) All persons conducting mortgage broker or loan officer activity are properly licensed;

(2) All locations at which such activities are conducted are properly licensed;

(3) All required books and records are being maintained in accordance with [~~7 TAC~~] §80.13;

(4) Legal and regulatory requirements applicable to licensees or the licensee's mortgage broker business are being properly followed; and

(5) Such other matters as the Commissioner may deem necessary or advisable to carry out the purposes of the Act

(d) Inspections will be conducted at no additional cost to the licensees.

(e) The inspector will review a sample of Mortgage Loan Files identified by the inspector on the date of inspection and randomly selected from the licensee's Mortgage Transaction Log. The inspector may expand the number of files to be reviewed if, in his or her discretion, conditions warrant.

(f) The inspector may require a licensee, at his or her [~~its~~] own cost, to make copies of loan files or such other books and records as the inspector deems appropriate for the preparation of or inclusion in the inspection report.

(g) The work papers, compilations, findings, reports, summaries, and other materials, in whatever form, relating to an inspection conducted under this section, shall be maintained as confidential except as required or expressly permitted by law.

(h) Failure of a licensee to cooperate with the inspection or failure to grant the inspector access to books, records, documents, operations, and facilities of the licensee will subject the licensee and any sponsoring broker (if applicable) to enforcement actions by the Commissioner, including, but not limited to, administrative penalties.

(i) Whenever the Department must travel out-of-state to conduct an inspection of a licensee because that licensee maintains required records at a location outside of the state, the licensee will be required to reimburse the Department for the actual cost the Department incurs in connection with such out-of-state travel including, but not limited to, transportation, lodging, meals, employee travel time, telephone and FAX communication, courier service and any other reasonably related costs.

§80.21. Investigations.

(a) The Commissioner may, upon a finding of reasonable cause, investigate a person licensed under the Act to determine whether the person is complying with the Act and these regulations.

(b) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out [~~carryout~~] the purposes of the Act.

(c) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of the Act.

(d) The person who is the designated representative of an entity licensed as a mortgage broker is responsible for all acts and conduct as a mortgage broker performed by or through the business entity. A complaint which names the entity as a mortgage broker as the subject of the complaint but which does not specifically name the designated officer, manager or partner of the business entity, is a complaint against the mortgage broker acting as the designated representative at the time of any alleged violation for the purposes of determining the designated person's involvement in any alleged violation and whether the designated person fulfilled his or her professional responsibilities to the Commissioner and members of the public. A complaint which names a loan officer sponsored by an entity licensed as a mortgage broker but which does not specifically name the designated representative of the entity is a complaint against the mortgage broker who was acting as a designated representative at the time of any alleged violation by the loan officer for the purposes of determining the designated representative's involvement in any alleged violation and whether the designated representative fulfilled his or her professional responsibilities to the Commissioner and members of the public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703756
John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1352

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SUBCHAPTER K. ANNUAL REPORTS

7 TAC §80.23

The amended sections are proposed under *Finance Code*, §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, §156.102(a) and (b), which authorize the Commissioner of the Texas Savings and Mortgage Lending Department, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendments is *Finance Code*, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The proposed amendments relate to the following sections of the *Finance Code*: §156.002; 156.2011; 156.202; 156.204; 156.208; 156.211; 156.214; 343.103; and 343.105.

§80.23. Annual Reports.

(a) A mortgage broker shall file an annual report containing such information regarding the mortgage broker activity of the licensee and each sponsored loan officer as the Commissioner may require. The annual report shall be submitted on a form promulgated by the Commissioner. The annual report must be filed before March 1 of each year and shall cover the mortgage broker activities for the calendar year immediately preceding the year in which the report is due. [~~The Commissioner shall, not more frequently than once during each fiscal year, require each licensed mortgage broker to file an annual report. The Commissioner shall specify the information that each mortgage broker shall provide regarding the mortgage brokerage activity of the licensee and each licensed loan officer under his or her sponsorship.~~]

(b) The Commissioner shall prepare and make public a report summarizing the annual reports provided by the licensees but shall treat each individual report and the information contained therein as confidential because of the proprietary and confidential information regarding the business activity of the licensees set forth therein.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. ADMINISTRATION AND RECORDS

7 TAC §80.14

The Finance Commission of Texas ("Finance Commission") proposes to amend 7 TAC §80.14, Approval of Courses. The amendments are proposed in order to implement the provisions of HB 2783 as passed by the 80th Texas Legislature. In addition, the amendments are being proposed to incorporate into rule the Department of Savings and Mortgage Lending's existing standards for approving educational courses which may be used to satisfy the initial educational requirements for the licensing of mortgage brokers and loan officers and for satisfying the continuing education requirements of the Mortgage Broker License Act, *Finance Code* Chapter 156 (the "Act").

The proposed amendments to §80.14(a) expand the narrative as to the purpose and goals of the educational program, which are to promote and further the purposes of the Act; ensures that applicants and licensees receive the minimal knowledge needed to acquire their licenses and operate in compliance with federal and state laws in conducting mortgage-lending activities; and to provide review and oversight of courses available to mortgage broker and loan officer applicants and licensees.

Existing §80.14(b) is deleted and new §80.14(j) incorporates and expands upon the deleted language. Existing §80.14(c), (d), and (e) are moved to a later place in the rule and are lettered appropriately.

The new provisions proposed in new §80.14(b) incorporate standards for course delivery methods and course content. Appropriate distinctions are made for classroom instruction and online instruction. Particular attention has been devoted to the development and delivery of on-line courses. On-line courses present particular challenges such as how to verify that course content is sufficient for the credit hours sought and how to verify that the applicant or licensee actually completes the course material. The proposed standards address these issues by requiring an interactive component which requires the student to successfully answer questions at specified intervals throughout the course and by requiring that on-line courses have the ability to verify the identity of the student. In order to promote quality content, courses offered by correspondence are required to have a proctored final exam. This helps insure that the student has studied and completed the course material. Proposed §80.14(b) also includes standards for approval of course instructors and standards for seminar courses.

Amended *Finance Code* §156.214 permits the Department to assess a fee for course approval, and this change is addressed in proposed §80.14(j). The Department may assess up to $200 per course.

Proposed §80.14(c) and (d) establish a classification system for courses as core, ethics, and continuing education. Criteria for determining course content for each class are established. The requirements for core courses and ethics courses are proposed consistent with the requirements of *Finance Code* §156.204, which sets forth minimum educational requirements for mortgage brokers and loan officers.

Proposed §80.14(e) - (q) formalize by rule the existing procedures the Department uses for course and instructor approvals. One important element is found in subsection (h) which requires

periodic review and evaluation of approved course offerings. The Department believes that meaningful student feedback is an important component of monitoring the effectiveness of the educational component.

The Act establishes a Mortgage Broker Advisory Committee to advise the Commissioner and the Finance Commission on the promulgation of forms and regulations and the implementation of the Act. The advisory committee met on July 18, 2007, and discussed the proposed amendments. The amendments as presented to the Finance Commission were recommended for publication by a unanimous vote of the advisory committee.

Danny Payne, Commissioner of the Department of Savings and Mortgage Lending, has determined that for the first five-year period the amended section, as proposed, will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section, and it will add equal amounts of revenue and costs to the Department.

Mr. Payne estimates that for the first five years the amended section is in effect, the public will benefit by having comprehensive educational standards to enhance the quality of both pre-licensing and post-licensing education for mortgage brokers and loan officers. The industry and educational providers will benefit by having more concrete and more readily accessible standards by which to develop and deliver courses. No difference will exist between the cost of compliance for small business and the cost of compliance for the largest business affected by the amendments.

Comments on proposed amendments may be submitted in writing to Danny Payne, Commissioner, Texas Savings and Mortgage Lending Department, 2601 North Lamar, Suite 201, Austin, Texas 78705-4294, or e-mailed to smlinfo@sml.state.tx.us, no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

The amended section is proposed under *Finance Code*, §11.306, which authorizes the Finance Commission to adopt mortgage broker rules as provided by Chapter 156 of the Act, and under *Finance Code*, §156.102(a) and (b), which authorize the Commissioner of the Texas Department of Savings and Mortgage Lending, subject to review and compliance with the directives of the Finance Commission, to adopt and enforce rules necessary for the intent of or to ensure compliance with the Act.

The section of the Act affected by the proposed amendment is *Finance Code*, §156.102(a) relating to authority for the Finance Commission to adopt rules to implement the intended purposes of the Act or to enforce the Act. The proposed amendment relates to the following sections of the Finance Code: §§156.204; 156.208; and 156.214.

§80.14. Approval of Courses.

(a) The Department's education program is established to promote and further the purposes of the Act; ensures that applicants and licensees receive the minimal knowledge needed to acquire their licenses and operate in compliance with federal and state laws in conducting mortgage-lending activities; and provides review and oversight of courses available to mortgage broker and loan officer applicants and licensees. In order to be approved by the Commissioner [~~commissioner~~], a person or entity providing a course to meet the educational requirements of the Act must establish that the subject matter of such course will specifically promote or further the purposes of the Act. Courses of a general business nature will generally not be approved. Courses directed towards an understanding of mortgage lending processes, markets, and legal requirements are encouraged.

(b) Types of course delivery methods and standards:

(1) Classroom and classroom-equivalent.

(A) Classroom.

(i) A class must consist of at least five students, unless otherwise approved by the Department prior to the start of the class.

(ii) The training site must be easily accessible and secure for the safety of the student, and must comply with all applicable state and federal laws, including, but not limited to, the Americans with Disabilities Act of 1990.

(iii) The instructor must be approved by the Department and be a disinterested third party, i.e., an individual who is not related to a student by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; and is not an employee or employer of the student.

(iv) No more than a 10 minute break is allowed for every 50 minutes of instruction.

(v) One hour of classroom instruction (including break) equals one credit hour.

(B) Classroom-equivalent.

(i) A class must consist of at least five students, unless otherwise approved by the Department prior to the start of the class.

(ii) In circumstances involving remote presentations, the students and the instructor do not need to be in the same location. In the case of presenting recorded or text materials, the instructor making the live course presentation does not have to be the same instructor included on the recorded presentation or who prepared the text materials.

(iii) A disinterested third party attendant, an instructor, or a disinterested third party using visual observation technology must visually monitor attendance either inside or at all exits to the course presentation area at all times during the course presentation.

(iv) Question and answer and discussion periods must be provided by an instructor making a live presentation of the course to students in the same room or via real-time live audio or audio-visual connection which shall allow for immediate student inquiries and responses with the presenting instructor, or an instructor who is present for the entire remote, recorded, or computer-based course presentation to students in the same room which shall allow for immediate inquiries and responses of students to the instructor.

(v) The course pace is set by the instructor and does not allow for independent completion of the course by students.

(vi) The instructor must be approved by the Department and be a disinterested third party, i.e., an individual who is not related to a student by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; and is not an employee or employer of the student.

(vii) No more than a 10 minute break is allowed for every 50 minutes of instruction.

(viii) One hour of classroom instruction (including break) equals one credit hour.

(2) Correspondence.

(A) Courses may include textbook, audio, video, computer-based instruction, or any combination of these in an independent

study setting designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the Department.

(B) Provides for a written final examination of at least six questions for each one hour of credit approved (up to a maximum of 100 questions per course) that reasonably evaluates the student's understanding of the course content. At least 70% of the questions must be answered correctly for the student to be awarded a course completion certificate. At least two versions of the final examination must be available with the second examination provided to a student who fails at the first attempt. Anyone not passing the examination after the second attempt must retake the course before being offered a re-examination opportunity.

(C) Multiple choice questions must have at least four appropriate potential responses and for which "all of the above" or "none of the above" is not an appropriate option. No "true/false" questions are acceptable.

(D) Common industry best-practices guidelines will be used in reviewing and approving questions.

(E) A proctored final examination must be administered under controlled conditions to positively identify students at a location and by an official approved by the Department prior to the course material being presented to the students. Proctors must be approved by the Department and be a disinterested third party, that is an individual who is not related to a student by blood, adoption, or marriage as a parent, child, grandparent, sibling, niece, nephew, aunt, uncle, or first cousin; and is not an employee or employer of the student.

(F) A minimum standard of 12,000 words (200 words-per-minute times 60 minutes) equals one credit hour.

(3) Online.

(A) Courses may be internet, CD-ROM, DVD, or other computer-based presentations.

(B) Sessions may not have more than one student at any one presentation of the course.

(C) The course must be designed in such a manner as to insure that the course cannot be completed by the typical enrollee in less time than the period for which the course is certified to the Department.

(D) Each course must have an interactive electronic component that:

(i) Provides for at least four interactive multiple choice (question with four possible answers) inquiry periods during each hour of the course, one of which shall be at the end of the course. Inquiry periods shall occur at regular and relatively evenly-spaced intervals between each period. Inquiry periods shall cover material presented in that section of the course.

(ii) Requires answering 70% of the test questions for each period correctly to demonstrate mastery of the current section, including the final section, before the student is allowed by the program to proceed to the next section or complete the course.

(iii) Identifies all incorrect responses and informs the student of the correct response with an explanation of the correct answer.

(iv) Generates a different set of test questions for the section, which may be repeated as necessary on a random or rotating basis if the student does not achieve the 70% correct response rate necessary to advance to the next section.

(v) Is capable of generating at least two separate sets of test questions for each inquiry period.

(vi) Includes a minimum of six questions for every one hour of instructor credit approved.

(vii) Provides for a method to directly transmit the final course completion results or a printed course completion receipt to the provider for issuance of a completion certificate.

(viii) Has a means to reasonably authenticate the student's identity on an hourly basis, including upon entering, during, and exiting the course.

(4) Seminar. A seminar is a one-time event which must meet the requirements of a classroom course, and is presented at particular events such as conventions and organizational meetings.

[~~(b) In order to have an educational course approved by the Commissioner, the person or entity providing the course must provide to the Commissioner a written request for approval, using the prescribed form (together with any required or appropriate supplemental material) and such other information as the Commissioner may reasonably request.~~]

(c) The Department classifies all of its approved courses into the following three types:

(1) Core.

(A) Assists in the preparation of an applicant for taking and passing the Texas pre-licensing examination as required by the Act for new mortgage broker and loan officer applicants;

(B) If taken in a classroom or classroom-equivalent setting, meets the educational requirements for new mortgage broker and loan officer applicants; and

(C) Meets the educational requirements for renewing mortgage broker and loan officer licensees.

(2) Ethics.

(A) If taken in a classroom or classroom-equivalent setting, meets the educational requirements for new mortgage broker and loan officer applicants. The total number of hours necessary is determined by the Commissioner with a minimum of two hours required.

(B) Meets the educational requirements for renewing mortgage broker and loan officer licensees.

(3) Continuing education. These courses meet the general educational requirements for renewing mortgage broker and loan officer licensees.

(d) Approved subject matter. Course types are determined based on the material presented in the course.

(1) Core courses must focus on topics covered by the Texas pre-licensing examination, specifically:

(A) Equal Credit Opportunity Act (ECOA) and Regulation B;

(B) Real Estate Settlement Procedures Act (RESPA) and Regulation X;

(C) Truth in Lending Act (TILA) and Regulation Z;

(D) Mortgage Broker License Act (MBLA) and Regulation;

(E) General loan terms, knowledge or market practices;

(F) Application and pre-qualification process;

(G) Role of the mortgage broker and loan officer;

(H) Secondary market or federal loan program terminology;

(I) Texas home equity;

(J) Predatory lending;

(K) Deceptive trade practices; or

(L) General mortgage-related math.

(2) Ethics courses must deal with the usage and customs among members of the mortgage lending industry, involving their moral and professional duties toward clients, lenders, borrowers, and one another. All ethics courses must include a minimum of five discussion questions designed to engage attendees in conversation regarding ethical issues facing them as mortgage lending professionals.

(3) Continuing education courses may include overviews of one or more of the subjects listed under core subject matter, general industry-related information, and other topics relevant to mortgage brokers and loan officers. Courses that may be approved include, but are not limited to:

(A) Loan origination;

(B) Loan processing;

(C) Appraisal process;

(D) Underwriting;

(E) Credit analysis; and

(F) Finance.

(e) To receive approval to issue certificates for continuing education credit for special events and luncheons prior to the event, the sponsor of the activity must provide the Department an outline of the topics discussed and the date(s) of the activity. The Department may also grant continuing education credit on a case-by-case basis to individuals receiving college credit for courses taken in pursuit of degrees. Individuals requesting consideration must provide the Department proof of successfully completing the course and a description and syllabus of the course.

(f) The Department has the discretion of granting credit to those hours that specifically relate to the subject matter. For example, a provider may conduct a 15-hour course, but the Department will grant only four hours of credit for the portion of the class that directly relates to the pertinent subject matter.

~~[(f) The Mortgage Broker License Act requires that each licensee complete at least fifteen hours of continuing education courses during the term of his or her current license. The Mortgage Broker License Act further requires that at least eight of the fifteen hours relate to residential mortgage lending.]~~

~~[(1) Courses which relate to residential mortgage lending and satisfy the eight hour requirement are those courses covering the following subject matters provided that the courses meet the other requirements of the Department's rules:]~~

~~[(A) courses related to ethics in origination of residential mortgage loans;]~~

~~[(B) courses relating to the state and federal laws governing residential mortgage lending including the Mortgage Broker License Act and the Department's rules, the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.), the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.), the Texas Constitution, statutes, and official interpretations relating to home equity loans; and]~~

~~[(C) courses relating to predatory lending and deceptive trade practices in residential mortgage lending.]~~

~~[(2) The remaining seven hours may be satisfied by taking courses which cover any of the following subjects provided that the courses meet the other requirements of the Department's rules: courses that are related to finance, financial consulting, lending, real estate contracts, discrimination laws, or real property conveyances.]~~

(g) To be approved as an instructor, the instructor must document that he or she has adequate instructional training and subject matter expertise to properly convey the approved course material as approved by the Department. Any change to the status of a course instructor must be provided immediately to the Department. No course may be offered without the prior approval of the instructor.

(h) Once a course is approved and offered to the public, the Department may monitor the course to insure it is being instructed as it was originally presented for approval, and that both the course and the instructor are meeting the needs of the attendees. In order to accomplish this, the Department will conduct random audits and review student evaluations.

(1) The provider shall keep the Department informed regarding scheduling information of a classroom course, i.e., where and when a course will be offered, and permanent access to courses that are presented online via the internet. Any resulting audit will be documented and any negative feedback, regardless of the source, will be discussed with the provider.

(2) The provider shall distribute a Department-developed student evaluation to each attendee or user of the course. The evaluation will ask the student to complete the evaluation and mail or fax it directly to the Department; the provider should not collect forms and submit them to the Department on the students' behalf. The evaluations will be reviewed, and the Department will provide feedback as necessary to the provider. The Department's course evaluation form cannot be submitted by the provider, and providers cannot substitute their own form in place of the Department's form.

(3) The provider must provide to the Department a completed course attendance roster within five business days following the end of a course. The roster must include the name of the course, the course number, the dates the course was offered, and the name, contact information, and pass/fail indication for each attendee.

(i) Periodically the Commissioner will issue information to applicants, licensees, and providers on subjects believed to be relevant and necessary. Providers should remain informed of these notices by periodically reviewing the Department's website (www.sml.state.tx.us).

(j) All requests for review and approval of a course, including instructor(s), must be submitted using the Department's prescribed approval form, with the required processing fee not to exceed $200 per one-time review of the course. An applicable fee schedule shall be available and provided upon request. No fee will be required for courses provided and approved by a duly organized trade association the purpose of which is primarily to represent residential mortgage originators. The provider will be notified in writing of the decision of the Department to approve or deny the course. Resubmission of a reformatted course following a denial constitutes a new submission and must include the applicable fee.

(k) All requests must be mailed or hand-delivered to the Department and, in addition to the applicable fee, must include the following:

(1) Complete course material, textbooks, handouts, or other learning materials;

(2) Complete course instructor manual;

(3) Time course outline by chapter and/or subject matter;

(4) If applicable, tests and/or examinations given to the student during the course, and answers to the questions;

(5) If classroom-equivalent, correspondence or online course, how the course meets standards identified for the specific delivery type described above;

(6) Instructor(s) resume(s); and

(7) Sample of course completion certificate issued to attendee.

(l) [~~(c)~~] A course is not approved until and unless the Commissioner [~~commissioner~~] issues written approval.

(m) [~~(d)~~] It is the responsibility of each person or entity providing any such courses to obtain such other licenses, permits, and approvals as may be required by applicable law. It is the responsibility of the person or entity providing any such courses to take all steps necessary to assure that the instruction and materials reflect current legal and regulatory requirements and that the course materials and presentation conform to the presentation to the Commissioner [~~commissioner~~] for approval.

(n) [~~(e)~~] Unless the approval of the Commissioner [~~commissioner~~] indicates otherwise, approval of a course is valid for two years [~~one year~~]. Approval of a course may be terminated by the Commissioner [~~commissioner~~] at any time without need of any prior notice if the Commissioner [~~commissioner~~] finds that a course is not being conducted in accordance with the purposes of the Act. The provider can submit a request for an extension of the course prior to its expiration using company letterhead if there are no changes to the course as last approved, along with the applicable fee. If there are substantial changes, the provider should resubmit a new request for course review, along with the applicable fee.

(o) The Mortgage Broker License Act requires that each licensee complete at least 15 hours of continuing education courses during the term of his or her current license. The Mortgage Broker License Act further requires that at least eight of the fifteen hours relate to residential mortgage lending, defined as core courses by the Department. The remaining seven hours may be satisfied by taking courses which cover any of the following subjects provided that the courses meet the other requirements of the Department's rules: courses that are related to finance, financial consulting, lending, real estate contracts, discrimination laws, or real property conveyances, which are defined as continuing education courses.

(p) Following the completion of any course, the provider must issue a certificate of completion indicating on the certificate the following details:

(1) Provider name as submitted to the Department;

(2) Course name as submitted to and approved by the Department;

(3) Course number assigned by the Department;

(4) Student's full and legal name;

(5) Hours completed;

(6) Date completed;

(7) Type of course and delivery type; and

(8) Name and signature of course completion verifier in the employ of the provider.

(q) Providers may not advertise that their course has been approved by the Department until they have received written confirmation from the Department of the certification of their course. Providers may advertise submitted courses by indicating the course is pending approval. No credit hours will be accepted for any class attended by an applicant or licensee that was not approved at the time of attendance. In addition, advertisements shall not be misleading as to the course content or requirements for successful completion, and must clearly state whether the provider is offering the course for classroom, classroom-equivalent, correspondence, and/or online delivery, or as a one-time seminar.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 87. TAX REFUND ANTICIPATION LOANS

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §§87.102 - 87.107

The Finance Commission of Texas (commission) proposes new Chapter 87, Subchapter A, §§87.102 - 87.107, concerning Tax Refund Anticipation Loans Registration Procedures.

In general, the purpose of new §§87.102 - 87.107 is to establish registration procedures as required under Texas Finance Code, Chapter 351, Tax Refund Anticipation Loans (Acts 2007, 80th Legislature, Chapter 135), as enacted by the Texas Legislature in House Bill 1344 (HB 1344). The proposed rules provide procedures for filing an application for a tax refund anticipation loan registration, processing procedures, procedures for relocation of a registered location, the fees associated with the registration, the designation of applications and notices as public records, and annual renewal procedures. The agency plans to propose a rule regarding the grounds for revocation at a future meeting of the commission.

Section 87.102 describes the procedure for filing a new application for a tax refund anticipation loan registration, including instructions regarding what forms to use, what information is necessary on the application, and what information must be filed with the application.

In conjunction with the filing requirements under §87.102, the agency considered the submission of an applicant's disclosure forms, but instead plans to confirm that disclosures meet legal requirements through a series of detailed questions asked as part of the application process. The agency believes that these questions will serve as an appropriate mechanism to ensure that applicant disclosures are in compliance with state law. Thus, comprehensive questions concerning an applicant's disclosure forms will be included as part of the Application for Registration of Tax Refund Anticipation Loan Facilitator.

Section 87.103 outlines how an application for a tax refund anticipation loan registration is processed, including a description of when an application is complete.

Section 87.104 describes the procedures for relocating the registered location, outlining the information to be included in a notice to the commissioner.

Section 87.105 sets out the fees for new registered locations, registration amendments, and annual assessments.

Section 87.106 describes how registration applications and notices are public records, citing the relevant provisions within the Texas Government Code.

Section 88.107 describes the procedures for annual renewal, including the payment of fees by December 1.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws.

Additional economic costs will be incurred by a person required to comply with this proposal. The registration fees as outlined by new §87.105 constitute the potential anticipated costs for registered tax refund anticipation loan facilitators, with a fee of $50 to process new applications. The fixed cost of an annual assessment will be $50 per registered location. Other potential, but not required, fees could result from registration amendments ($25 each). It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses.

Compliance with these rules is optional prior to January 1, 2008. Tax refund anticipation loan facilitators under this chapter should apply for registration no later than January 1, 2008.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code, §351.003, Registration of Facilitators (Acts 2007, 80th Legislature, Chapter 135), which authorizes the Finance Commission to adopt rules to prescribe procedures for the registration of and collection of processing fees from facilitators of tax refund anticipation loans.

The statutory provisions affected by the proposed new sections will be contained in Texas Finance Code, Chapter 351, Tax Refund Anticipation Loans (Acts 2007, 80th Legislature, Chapter 135, effective September 1, 2007).

§87.102. Filing of New Application.

(a) New application. An application for issuance of a new tax refund anticipation loan facilitator registration must be submitted as prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions.

(b) Required information. The application must include the following required forms and filings. All questions must be answered.

(1) Application for Registration of Tax Refund Anticipation Loan Facilitator.

(A) Each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a tax refund anticipation loan must be separately registered.

(B) The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(2) Assumed names. For any applicant that does business under an assumed name as that term is defined in Texas Business and Commerce Code, §36.02(7), the applicant must provide all assumed names used.

§87.103. Processing of Application.

Complete application. An application is complete when it:

(1) conforms to the rules and the commissioner's published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

§87.104. Relocation of Registered Location.

A registered tax refund anticipation loan facilitator may move the business office from the registered location to any other location by giving notice of intended relocation to the commissioner. The notice must include the present address of the registered location, the contemplated new address of the registered location, and the approximate date of relocation.

§87.105. Fees.

(a) New registrations. A $50 fee is assessed each time an application for a new registration under this chapter is filed and is non-refundable.

(b) Registration amendments. A fee of $25 must be paid each time a registered facilitator seeks to amend a registration by changing the assumed name of the registrant or relocating an office.

(c) Annual assessments. An annual fixed fee of $50 is required for each registered tax refund anticipation loan location. The agency may provide a discount or credit to an assessment as necessary to appropriately allocate and recover the requisite costs of administration.

§87.106. Applications and Notices as Public Records.

Once a registration application or notice is filed with the Office of Consumer Credit Commissioner (OCCC), it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a tax refund anticipation loan facilitator application or notice to the applicant or registered facilitator. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

§87.107. Annual Renewal.

Not later than December 1, a registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the fees required by §87.105(c) of this title (relating to Fees); and

(2) any other information required by the commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 936-7640

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CHAPTER 89. PROPERTY TAX LENDERS
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §89.101, §89.102

The Finance Commission of Texas (commission) proposes new 7 TAC Chapter 89, §89.101 and §89.102, concerning Property Tax Lenders. The proposed new rules contained in 7 TAC §89.101 and §89.102 outline Subchapter A, concerning General Provisions.

In general, the purpose of the proposed new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). The proposed new rules also address applicability issues. The individual purposes of each rule are provided below.

Section 89.101 outlines the purpose, scope, and applicability of the chapter. In particular, §89.101(d) clarifies that the exemption from other licensing as provided in Texas Finance Code, §351.051(d), is limited to authorized property tax lending. In other words, in order to conduct property tax lending under Chapter 351, a person is not required to have a license under Chapter 156, Chapter 342, or any other provision of the Finance Code. A person may, however, still need another license to conduct other regulated activity, as Chapter 156, Chapter 342, and any other chapter of the Finance Code, or other law, would apply independently of Chapter 351.

Section 89.102 provides general definitions to be used throughout the chapter.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that, for each year of the first five years the proposed new rules are in effect, the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws.

There is no anticipated cost to persons who are required to comply with the new rules as proposed. It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses. There will be no effect on individuals required to comply with the new rules as proposed.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code, §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the proposed new sections will be contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.101. Purpose, Scope, and Applicability.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220).

(b) Scope. This chapter applies to all persons engaged in the business of making, transacting, or negotiating property tax loans subject to Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act." As such, this chapter only applies to lenders in the business of making, transacting or negotiating property tax loans that:

(1) are secured by a special lien against property transferred from a taxing unit to the property tax lender; and

(2) may be further secured by the lien or security interest created by a deed of trust, security deed, or other security instrument.

(c) License required for authorized property tax lending. Texas Finance Code, Chapter 351, authorizes a property tax lender to engage in the business of making, transacting, or negotiating property tax loans, as provided in subsection (b) of this section. Texas Finance Code, §351.051 (Acts 2007, 80th Leg., ch. 1220) and this chapter require that property tax lenders hold a license in order to conduct authorized property tax lending under Chapter 351.

(d) Exemption from other licensing limited to authorized property tax lending. Texas Finance Code, §351.051(d) (Acts 2007, 80th Leg., ch. 1220) provides that a property tax lender licensed under Chapter 351 is not required to be licensed under Chapter 156, Chapter 342, or any other provision of the Finance Code in order to conduct authorized property tax lending under Chapter 351. If a person engages in regulated activity otherwise subject to Chapter 156, Chapter 342, any other chapter of the Finance Code, or other law, the other chapter or law pertaining to the type of regulated activity conducted would apply independently of Chapter 351.

(e) License not required. National banks and federally-chartered thrifts and credit unions, wherever located, and federally-insured state banks, state thrifts and state credit unions with offices located outside of Texas may make property tax loans to Texas residents without obtaining a property tax lender license from the OCCC under Texas Finance Code, §351.051 *et seq*.

§89.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(2) Date of consummation--The date of closing or execution of a loan contract.

(3) Licensee--Any person who has been issued a property tax lender license pursuant to Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220).

(4) Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, or the act of funding the loan or transferring money from the lender to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(5) Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(6) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(7) Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents and the transfer of money by the lender to the borrower or to a third party on the borrower's behalf. This also includes the act of arranging a loan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §§89.201 - 89.206

The Finance Commission of Texas (commission) proposes new 7 TAC, Chapter 89, §§89.201 - 89.206, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.201 - 89.206 outline Subchapter B, concerning Authorized Activities.

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). The proposed rules address authorized activities. The individual purposes of each rule are provided below.

Section 89.201 provides for the responsibility of licensees for the acts of their agents.

Section 89.202 requires that each officer, director, employee, and agent of a licensee have a working knowledge of the laws and regulations applicable to the licensee's business.

Section 89.203 outlines transactions that are considered to constitute a "device, subterfuge, or pretense" under Texas Finance Code, §351.051(b), and attempted evasion of the applicability of 7 TAC, Chapter 89.

Section 89.204 defines particular terms applicable to licensees with multiple licenses, and also outlines situations in which multiple licenses are required.

Section 89.205 outlines situations where licenses are required to conduct loans by mail, refers the reader to §89.204 for definitions, and provides that loans conducted via the Internet are considered to be loans by mail.

Section 89.206 provides the procedures for an individual to apply for an exemption from licensing as a qualifying individual under Texas Finance Code, §351.051(c)(2). Upon receipt of an individual's signed, dated, and notarized affidavit containing the required information, the agency will issue a certificate of exemption to the individual.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws.

There is no anticipated cost to persons who are required to comply with the new rules as proposed. It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses. There will be no effect on individuals required to comply with the new rules as proposed.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the proposed new sections will be contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.201. Responsibility for Acts of Agents.

A licensee is responsible for the acts and omissions of its officers, directors, employees, and agents in the conduct of the licensee's business.

§89.202. Knowledge of Laws and Regulations Required.

Each officer, director, employee, and agent of a licensee shall have a working knowledge of Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), its implementing regulations, and other pertinent state and federal statutes and regulations that apply to the licensee's business.

§89.203. Attempted Evasion of Applicability of Chapter.

A "device, subterfuge, or pretense to evade the application" of this chapter, as used in Texas Finance Code, §351.051(b) (Acts 2007, 80th Leg., ch. 1220) refers to any transaction that in form may appear on its face to be something other than a property tax loan, but in substance meets the definition of a property tax loan as defined in Texas Finance Code, §351.002(2) (Acts 2007, 80th Leg., ch. 1220).

§89.204. Multiple Licenses.

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §351.052(b) (Acts 2007, 80th Leg., ch. 1220) are to be construed as follows.

(1) Made or Make--Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or Arranged; Negotiate or Arrange--Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or Collect--Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) Application. Any office making, negotiating, arranging, servicing, holding, or collecting loans must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

§89.205. Loans by Mail.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §351.053(b) (Acts 2007, 80th Leg., ch. 1220) are to be construed according to the definitions contained in §89.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Internet loans. For purposes of Texas Finance Code, §351.053(b), a loan made, negotiated, arranged, or collected by or through the Internet is considered a "loan by mail."

§89.206. Application for Exemption.

(a) For an individual to apply for exemption from licensing under this chapter as a qualifying individual under Texas Finance Code, §351.051(c)(2) (Acts 2007, 80th Leg., ch. 1220), the individual must provide a signed, dated, and notarized affidavit containing the following:

(1) the individual's name and address;

(2) the individual's social security number;

(3) the anticipated date of the property tax loan;

(4) a description of the property by street address, and if applicable, legal description; and

(5) a sworn statement that the individual is someone who:

(A) is making a property tax loan from the individual's own funds to a spouse, former spouse, or persons in the lineal line of consanguinity of the individual lending the money; or

(B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.

(b) Upon receipt of an affidavit fulfilling the requirements of subsection (a) of this section, the commissioner will issue a certificate of exemption to the individual.

(c) Individuals applying for exemption under Texas Finance Code, §351.051(c)(2) must submit an application according to this section for each property tax loan transaction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

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SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§89.301 - 89.311

The Finance Commission of Texas (commission) proposes new 7 TAC, Chapter 89, §§89.301 - 89.311, concerning Property Tax Lenders. The new rules contained in 7 TAC §§89.301 - 89.311 outline Subchapter C, concerning Application Procedures.

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). The individual purposes of each rule are provided below.

Section 89.301 defines particular terms, including "principal party." The definition of "principal party" contains a breakdown by entity type, outlining individuals considered to be principal parties for each type of legal business entity.

Section 89.302 describes the procedures for filing a new application for a property tax lender license, including instructions regarding what information is necessary on the application and what information must be filed with the application.

Section 89.303 describes the procedures for filing an application for transfer of a property tax lender license, including the filing requirements and a definition of "transfer of ownership." "Transfer of ownership" is broken down by entity type and situation to outline the circumstances when a transfer will be required.

Section 89.304 outlines what action a licensee must take when it changes the proportion of ownership in or the form of the licensed entity, and lists the time frame within which the licensee must notify the commissioner.

Section 89.305 requires each applicant to supplement its application upon request by the agency.

Section 89.306 requires each applicant, upon discovery of new or changed information, to supplement its application within 10 calendar days of discovery of the new or changed information.

Section 89.307 outlines how an application for a property tax lender license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 89.308 describes the procedures for relocating a licensed office, including deadlines for notification.

Section 89.309 describes how a licensee may change its license status, including changing a license from active to inactive status and activating an inactive license. This section also clarifies the procedures for a licensee to voluntarily surrender its license, resulting in cancellation, as well as when a license will expire.

Section 89.310 sets out the fees for new licenses, license transfers, fingerprint processing, license amendments, license duplication, costs of hearings, and annual assessments.

Section 89.311 states that, upon filing with the Office of Consumer Credit Commissioner, an application for a property tax lender license or a notice submitted by an applicant or licensee becomes a state record and public information subject to the Texas Public Information Act.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws.

Additional economic costs will be incurred by a person required to comply with this proposal. The license fees outlined by new §89.310 constitute the potential anticipated costs for licensees, with a fee of $200 to process new applications, and a fingerprint processing fee of $40 per individual. The fixed cost of an annual assessment will be $430 per active license. Other potential, but not required, fees could result from license transfers ($200 for the first transfer; $50 for each additional transfer filed simultaneously), license amendments ($25 each), license duplicates ($10 each), and any cost of hearings. The potential cost of hearings is unpredictable due to the widely varying legal and factual issues involved. It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the proposed new sections will be contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days.

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are considered to be principal parties:

(A) proprietors, including spouses with community property interest;

(B) general partners;

(C) officers of privately-held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 351;

(D) directors of privately-held corporations;

(E) individuals associated with publicly-held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately-held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 351. One of the persons designated shall be responsible for assembling and providing the information required on behalf of the applicant and shall sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) trustees and executors; and

(H) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§89.302. Filing of New Application.

An application for issuance of a new property tax lender license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for Property Tax lender License.

(i) Location. A physical street address must be listed for the applicant's proposed lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of the applicant's proposed offices must be named.

(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.

(I) If the applicant is a proprietor, each owner must sign.

(II) If the applicant is a partnership, each general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnerships. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 5% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporations. Each officer and director must be named. Each shareholder holding 5% or more of the voting stock must be named if the corporation is privately-held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(v) Limited liability companies. Each "manager," "officer," and "member" owning 5% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 5% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(vi) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(vii) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

(C) Application Questionnaire. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Appointment of Statutory Agent and Consent to Service. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(E) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(F) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment History. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Statement of Experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(I) Business Operation Plan. Each applicant must provide a brief narrative explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(i) the source of customers;

(ii) the purpose(s) of loans;

(iii) the size of loans;

(iv) the source of working capital for planned operations;

(v) whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(vi) if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

(I) a list of the lenders for whom the applicant will be arranging or negotiating loans;

(II) whether the loans will be collected at the location where the loans are made; or

(III) if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(J) Financial Statement and Supporting Financial Information.

(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(K) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), an Assumed Name Certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.10, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.11, as amended. Evidence of the filing bearing the filing

stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §89.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the Disclosure of Owners and Principal Parties under paragraph (1)(B)(iii)(I) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are not required.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002, as amended.

(B) Loan forms. The applicant must provide information regarding all loan forms it intends to use.

(i) Custom forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(C) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of incorporation and any amendments;

(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the corporation identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly-held corporations. In addition to the items required for corporations, a publicly-held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(III) a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the company identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of company meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the company identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide:

(I) a certificate of authority to do business in Texas, if applicable; and

(II) a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.

(viii) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation

provides the entity formation information required by this section for that entity type.

(D) Bond. The commissioner may require a bond under Texas Finance Code, §351.102 (Acts 2007, 80th Leg., ch. 1220), when the commissioner finds that it would serve the public interest. When a bond is required, the commissioner shall give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location, including the Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(J) of this section. The person responsible for the day-to-day operations of the applicant's proposed new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§89.303. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(3) any change in ownership of a licensed limited partnership interest:

(A) in which a limited partner owning 10% or more relinquishes that owner's entire interest;

(B) in which a new limited partner obtains an ownership interest of 10% or more;

(C) in which a general partner relinquishes that owner's entire interest; or

(D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately-held corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately-held corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately-held corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly-held corporation;

(5) any change in the membership interest of a licensed limited liability company:

(A) in which a new member obtains an ownership interest of 10% or more;

(B) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(C) in which a purchase or acquisition of control of 51% or more of any company which is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of subsection (a)(1) - (6) of this section, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No property tax lender license may be sold, transferred or assigned without written approval by the commissioner.

(c) Filing requirements. An application for transfer of a property tax lender license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §89.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §89.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(J) of §89.302 of this title. The instructions in §89.302 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the Application for Property Tax lender License for the transfer event must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in subsection (c)(2) of this section must also be submitted.

(2) Evidence of transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(d) Permission to operate. No business under the license shall be conducted by any license transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the license transferee the authority to operate under the transferor's license pending approval of the license transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the license transferee in connection with the operation of the lending business. The permission to operate must be submitted before the license transferee takes control of the licensed operation. The agreement shall set a definite period of time for the license transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

§89.304. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 10 calendar days by filing the appropriate transfer application documents as provided in §89.303 of this title (relating to Transfer of License). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §89.303 of this title. A merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity requires a transfer application pursuant to §89.303 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership. This subsection does not apply to a publicly-held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly-held parent corporation, although a transfer application may be required under §89.303 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §89.303 of this title.

§89.305. Amendments to Pending Application.

Upon request, each applicant must provide information supplemental to that contained in the applicant's original application documents.

§89.306. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license must be reported within 10 calendar days after the person has knowledge of the action, fact or information.

§89.307. Processing of Application.

(a) Initial review. A response to an application will ordinarily be made within 14 calendar days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and §9.1 *et seq.* of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee shall be refunded to the applicant. The investigation fee and the fingerprint processing fee in §89.310 of this title (relating to Fees) shall be forfeited.

(f) Processing time.

(1) A license application will ordinarily be approved or denied within a maximum of 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing shall be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application shall be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§89.308. Relocation of Licensed Offices.

(a) Notice to commissioner. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be filed on the Amendment to Property Tax lender License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy

of the notice to debtors, and the applicable fee as outlined in §89.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice shall waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices shall identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§89.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a property tax lender license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be filed on the Amendment to Property Tax lender License or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be filed on the Amendment to Property Tax lender License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) Voluntary surrender of license. Subject to §89.407(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate. A voluntary surrender will result in cancellation of the license.

(d) Expiration. A license will expire on December 31 unless a fee is paid by the due date for license renewal. A licensee that pays the annual assessment fee will automatically be renewed even though a new license may not be issued.

§89.310. Fees.

(a) New licenses.

(1) Investigation fees. A $200 non-refundable investigation fee is assessed each time an application for a new license is filed.

(2) Assessment fees. An assessment fee of $430 per active license and $125 per inactive license is assessed each time an application for a new license is filed. This assessment fee will be refunded if the application is not approved.

(b) License transfers. An applicant must pay a $200 non-refundable investigation fee for the first license transfer and a $50 non-refundable investigation fee on each additional license transfer filed simultaneously.

(c) Fingerprint processing. The non-refundable fee to investigate each principal party's fingerprint record is $40 per individual.

(d) License amendments. A fee of $25 must be paid each time a licensee amends a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office.

(e) License duplicates. The fee for a license duplicate is $10.

(f) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §89.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the OCCC at a hearing.

(g) Annual assessments.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee of $430; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount that is $0.03 per each $1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 (Acts 2007, 80th Leg., ch. 1220), in accordance with the most recent annual report filing required by Texas Finance Code, §351.164 (Acts 2007, 80th Leg., ch. 1220).

(2) An annual assessment fee of $125 is required for each inactive license.

(3) The maximum annual assessment fee for each licensed entity shall not average more than $1,000 per active licensed location.

§89.311. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Government Code, §552.002. Under Government Code, §§441.190, 441.191 and 552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Government Code, §441.187. Under Government Code, §441.191, the OCCC may not return any original documents associated with a property tax lender license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, Government Code, Chapter 552.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703689
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 936-7640

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SUBCHAPTER D. LICENSE

7 TAC §§89.401 - 89.409

The Finance Commission of Texas (commission) proposes new 7 TAC, Chapter 89, §§89.401 - 89.409, concerning Property Tax

Lenders. The new rules contained in 7 TAC §§89.401 - 89.409 outline Subchapter D, concerning License.

In general, the purpose of the new rules is to establish application and licensing procedures as required under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), as enacted by the Texas Legislature in House Bill 2138 (HB 2138). The proposed rules also address authorized activities. The individual purposes of each rule are provided below.

Section 89.401 discusses the authorized activities of licensed lenders operating multiple branches.

Section 89.402 explains the requirement for displaying licenses.

Section 89.403 describes the agency's procedure for providing delinquent notices to licensees who have failed to pay an annual assessment fee.

Section 89.404 requires each licensee to file an annual report by March 31 for the prior calendar year.

Section 89.405 describes the effect of criminal history information on applicants and licensees, including what information must be provided on arrests, charges, indictments, and convictions. As per Texas Occupations Code, §53.022, subsection (c) of the rule outlines the factors the agency will consider in determining whether a conviction relates to the occupation of being a property tax lender.

Section 89.406 is a companion rule to §89.405. Section 89.406 describes the crimes directly related to the fitness for holding a license, as well as mitigating factors that will be considered, as per Texas Occupations Code, §53.023.

Section 89.407 details the effect of a license revocation, suspension, or surrender upon the authority to collect existing contracts.

Section 89.408 prescribes the process for a new application after a former licensee has surrendered its license or had a license revoked.

Section 89.409 provides the procedure for returning license certificates upon the reissuance of a license.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of the new rules will be enhanced compliance with the credit laws.

There is no anticipated cost to persons who are required to comply with the new rules as proposed. It is anticipated that there will be no adverse economic effect on small businesses as compared to the effect on large businesses. There will be no effect on individuals required to comply with the new rules as proposed.

Compliance with these rules is optional prior to March 1, 2008. Property tax lenders under this chapter should apply for licensure no later than March 1, 2008.

Comments on the proposed new rules may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rules are published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rules are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These new sections are proposed under Texas Finance Code §351.007 (Acts 2007, 80th Leg., ch. 1220), which authorizes the Finance Commission to adopt rules to ensure compliance with the "Property Tax Lender License Act."

The statutory provisions affected by the proposed new sections will be contained in Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220, eff. Sept. 1, 2007).

§89.401. Branch Networks.

For purposes of Texas Finance Code, §351.151(b) (Acts 2007, 80th Leg., ch. 1220), an authorized lender with multiple licensed offices is authorized to make, negotiate, arrange, and collect loans from any of its licensed locations. Any action relating to a single account may occur at different licensed locations as long as every action is made by a licensed branch operated by the same licensed lender.

§89.402. License Display.

Licenses must be prominently displayed in a licensee's office in a conspicuous location visible to the general public.

§89.403. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §351.155 (Acts 2007, 80th Leg., ch. 1220), notice of delinquency in the payment of an annual assessment fee is given upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service.

§89.404. Annual Report.

Each licensee must file the required annual report by March 31 for the prior year's calendar loan activity on forms prescribed by the commissioner and must comply with all instructions relating to submitting the report.

§89.405. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character and the information gathered is relevant to the licensing or enforcement action decision as described below.

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions must be disclosed. The

applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (d) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the principal party of the applicant has maintained a record of steady employment, has supported the principal party's dependents, and has otherwise maintained a record of good conduct. At a minimum, the principal party must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects negatively on an applicant's honesty and moral character.

(c) Factors in determining whether conviction relates to occupation of property tax lender. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner shall consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the principal party previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(d) Effect of criminal conviction on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220). For purposes of this section, the crimes listed below are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;

(B) Breach of trust or other fiduciary duty;

(C) Dishonesty or theft;

(D) Assault;

(E) Violation of a statute governing lending of this or another state;

(F) Failure to file a required report with a governmental body, or filing a false report;

(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes; or

(H) Attempt, preparation, or conspiracy to evade Texas Finance Code, Chapter 351 and its provisions.

(2) Effect of other criminal convictions. The commissioner may deny an application for a license, or revoke an existing license if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a property tax lender who originates or obtains loans written under Texas Finance Code, Chapter 351. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §89.406 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§89.406. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 351, Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220), involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, a crime involving failure to file a governmental report or filing a false report, or a crime involving the use or threat of force against another person, is a crime directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner shall consider, in addition to the factors listed in §89.405 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the following factors, as specified in Texas Occupations Code, §53.023:

(1) the extent and nature of the principal party's past criminal activity;

(2) the age of the principal party at the time of the commission of the crime;

(3) the time elapsed since the principal party's last criminal activity;

(4) the conduct and work activity of the principal party prior to and following the criminal activity;

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party, the sheriff or chief of police in the community where the principal party resides, and other persons in contact with the convicted principal party.

§89.407. Effect of Revocation, Suspension, or Surrender of License.

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a lender and a borrower, except no interest may be charged or received by the lender following the revocation, suspension, or surrender of its license. Alternatively, a lender whose license is revoked or suspended may transfer or sell its accounts to a licensed property tax lender who may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, §351.001, *et seq*. (Acts 2007, 80th Leg., ch. 1220).

(b) Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC.

§89.408. Application Process After Surrender or Revocation.

To obtain a license after surrender or revocation, the former licensee is required to file an application for a new license pursuant to the procedures set forth in §89.302 of this title (relating to Filing of New Application).

§89.409. License Reissuance.

In the event of reissuance of a license for any reason, the licensee shall return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g. lost, destroyed).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703690
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 936-7640

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §§3.1, 3.58, 3.73, 3.78

The Railroad Commission of Texas proposes amendments to §3.1, relating to Organization Report; Retention of Records; Notice Requirements; §3.58, relating to Oil, Gas, or Geothermal Resource Operator's Reports; §3.73, relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance; and §3.78, relating to Fees and Financial Security Requirements. The Commission proposes the amendments to implement Senate Bill 1670, 80th Legislature (2007), Regular Session, and make conforming changes.

In general, Senate Bill (SB) 1670 clarifies that any well under the Commission's jurisdiction, including an injection or disposal well, for which the Commission has canceled the certificate of compliance cannot be used until the Commission has reissued the certificate of compliance. The bill also provides that where an operator uses a well, or reports such use, after the certificate of compliance for the well has been canceled, the Commission may refuse to renew the operator's organization report until the operator has paid any reconnect fee or fees and the Commission reissues the certificate of compliance. The change should accelerate compliance and ensure that the Commission receives all payments due it at the time of organization report renewal.

SB 1670 redesignated Texas Natural Resources Code, Chapter 85, Subchapter E (relating to Certificates of Compliance), as Texas Natural Resources Code, Chapter 91, Subchapter P, and amended the current language of some sections. SB 1670 redesignated Texas Natural Resources Code, §85.161, relating to Well Owners and Operators Certificates, as Texas Natural Resources Code, §91.701, and amended the section to delete reference to the "oil or gas conservation laws of the state and conservation rules and orders of the commission" and to clarify that a certificate of compliance is necessary for any well subject to the Commission's jurisdiction under Texas Natural Resources Code, Title 3 (Oil and Gas); Texas Water Code, Chapter 26 (Water Quality Control), §26.131 (Duties of the Railroad Commission); or Texas Water Code, Chapter 27 (Injection Wells), Subchapter C (Oil and Gas Waste), to show compliance with that title, section, or subchapter and with any license, permit, or certificate issued to the owner or operator under that title, section, or subchapter.

SB 1670 redesignated Texas Natural Resources Code, §85.162, related to Prohibited Connection, as Texas Natural Resources Code, §91.702, and amended the section to delete reference to the "oil or gas conservation laws of the state and conservation rules and orders of the commission" and to clarify that no operator of a pipeline or other carrier can connect with any oil or gas well or any wells subject to Commission jurisdiction under Texas Natural Resources Code, Title 3; Texas Water Code, §26.131; or Texas Water Code, Chapter 27, Subchapter C, or any Commission rule, order, license, certificate, or permit issued pursuant to these statutes, until the owner or operator of the well furnishes a certificate of compliance.

SB 1670 redesignated Texas Natural Resources Code, §85.163, relating to Temporary Connection, as Texas Natural Resources Code, §91.703, but made no changes to the text.

SB 1670 redesignated Texas Natural Resources Code, §85.164, relating to Cancellation of Certificate, as Texas Natural Resources Code, §91.704, and amended the section to clarify that the Commission can cancel a certificate of compliance if the owner or operator of a well has violated or is violating Texas Natural Resources Code, Title 3; Texas Water Code, Chapter 26, §26.131; or Texas Water Code, Chapter 27, Subchapter C.

SB 1670 further redesignated Texas Natural Resources Code, §85.165, relating to Effect of Cancellation on Operator of Pipeline or Other Carrier, as Texas Natural Resources Code, §91.705, and amended the section to make a conforming amendment to reflect that, on notice from the Commission to the operator of a pipeline or other carrier connected to any well under Commission's jurisdiction that the certificate of compliance has been canceled, the operator of the pipeline or other carrier must disconnect from the well. The change makes it unlawful for the operator of a pipeline or other carrier to reconnect to--rather than transport oil from--the well until the Commission issues a new certificate of compliance, clarifying that all wells, including injection and disposal wells, are subject to the statute and Commission rules.

SB 1670 redesignated Texas Natural Resources Code, §85.166, relating to Effect of Cancellation on Owner or Operator of a Well, as Texas Natural Resources Code, §91.706, and amended the section to clarify that it is unlawful for an owner or operator of a well for which the certificate of compliance has been canceled to use the well for production, injection, or disposal until the Commission issues a new certificate of compliance. The bill also added a new provision that if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission may refuse to renew the operator's organization report until the operator pays the reconnect fee required by Texas Natural Resources Code, §91.707, and the Commission issues a new certificate of compliance for the well.

SB 1670 redesignated Texas Natural Resources Code, §85.167, relating to Fee for Reissued Certificate, as Texas Natural Resources Code, §91.707, and amended the section to make a conforming amendment to require payment of any reconnect fee resulting from violations before the Commission can issue a new certificate of compliance.

Current language in Texas Natural Resources Code, Chapter 85, Subchapter E (Certificate of Compliance) is broad enough to cover all wells under the jurisdiction of the Commission. However, while the statutory language makes it very clear that an operator cannot produce an oil or gas well without a certificate of compliance, it is less clear that an operator cannot use an injection or disposal well without a certificate of compliance. SB 1670 amended this statutory language to clearly provide that any well subject to the Commission's jurisdiction, including an injection or disposal well, may not be used until the Commission has issued or reissued a certificate of compliance.

The bill also added a new provision that if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission may refuse to renew the operator's organization report until the operator pays the reconnect fee and the Commission issues a new certificate of compliance for the well. The proposed change should accelerate compliance and ensure that the Commission receives all reconnect payments due the Commission from operators who have produced or used a well with a canceled certificate at the time of the organization report renewal.

The Commission proposes to amend §3.1(a)(3) to add Texas Health and Safety Code, Chapter 401; Texas Utilities Code, §121.201; and Texas Water Code, Chapter 26, to the list of statutes pursuant to which each organization performing activities subject to the Commission's jurisdiction must maintain a current organization report with the Commission until all duties, obligations, and liabilities incurred pursuant to Texas Health and Safety Code, Chapter 401 (relating to Oil and Gas Naturally Occurring Radioactive Material), Texas Utilities Code, §121.201 (relating to Safety Rules; Railroad Commission Power), and Texas Water Code, Chapter 26 (relating to Water Quality Control), as well as Commission rules, Texas Natural Resources Code, Title 3 (Subtitles A, B, C, and Chapter 111 of Subtitle D) and Title 5, and Texas Water Code, Chapters 27 and 29, are fulfilled.

The Commission proposes to amend §3.1(f) to delete the wording "and the taxation requirements of the Comptroller of Public Accounts. A tax dispute with the Comptroller of Public Accounts shall not be a basis for disapproving an organization report."

The Commission proposes to add new §3.1(g), to state that if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission may refuse to renew the operator's organization report until the operator pays the required reconnect fee or fees and the Commission issues the certificate of compliance required for that well.

The Commission proposes to amend the title of §3.58 to "Certificate of Compliance and Transportation Authority; Operator Reports" and to clarify that a P-4 (certificate of compliance and transportation authority) is required to operate "any well subject to the jurisdiction of the Commission." The Commission also proposes to amend §3.58(a)(1) to add references to Texas Natural Resources Code, Title 3; Texas Water Code, §26.131; and Texas Water Code, Chapter 27, and to clarify that the Commission has the authority to require an operator to provide evidence of a good faith claim to operate a lease or well. In general , the Commission's existing practice for handling the two-signature Form P-4s will not change; however, there may be special circumstances where the Commission would need some evidence of a transferee's right to operate a lease or well when a Form P-4 is filed to change the designation of operator.

The Commission proposes to amend §3.73(a), to add "or other carrier" and "subject to the jurisdiction of the Commission" to conform the rule wording with the new statutory language enacted by SB 1670.

The Commission proposes to amend §3.73(h) to replace the reference to Texas Natural Resources Code, §85.165, with a reference to Texas Natural Resources Code, §91.705, and to clarify that upon notice from the Commission that the certificate of compliance has been canceled, the pipeline or other carrier connected to any well "subject to the jurisdiction of the Commission" must disconnect from or suspend service to the well and shall not "reconnect to" the well until the Commission issues a new certificate of compliance.

The Commission proposes to amend §3.73(i) to replace the reference to Texas Natural Resources Code, §85.165, with Texas Natural Resources Code, §91.706(a), and to clarify that an operator of any well for which the Commission has canceled the certificate of compliance may not use that well "for production, injection, or disposal" until the Commission issues a new certificate of compliance for the well.

The Commission proposes to add new §3.73(j) to state that if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission may refuse to renew the operator's organization report until the operator pays the fee required and the Commission issues the certificate of compliance for the well. The Commission proposes to redesignate current subsection (j) as subsection (k).

Leslie Savage, Oil and Gas Division planner, has determined that for the first year the proposed amendments will be in effect, the fiscal implications as a result of enforcing or administering them will be a cost to the state of $28,500 for computer programming. SB 1670 allows the Commission to refuse to renew an organization report if the operator has not paid the reconnect fees, but only in cases where the operator has used or reported use for production, injection, or disposal. Therefore, the Commission requires a mechanism to monitor the systems where activity is reported (production, injection, and disposal) to trigger the requirement and the ability to flag the system for leases where actual operation is occurring but not being reported. For years two through five, there will be no additional cost or savings to the state as a result of enforcing or administering the amendments. There will be no fiscal implications for local governments.

Ms. Savage also has determined that the public benefit as a result of the proposed amendments will be the ability of the Commission to accelerate compliance with the requirement to pay reconnect fees and that non-compliant wells will not be used.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic ef-

fect on small businesses or micro-businesses, a state agency must prepare a statement of the effect of the rule on small businesses and micro-businesses, which must include an analysis of the cost of compliance with the rule for small businesses and micro-businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. The Commission assumes that there are oil and gas operators that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission does not have information on these businesses' gross receipts, sales revenues, or labor costs.

It is anticipated that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses as a whole. The amount of the reconnect fee provided by Texas Natural Resources Code, §91.707, is unchanged from previous law. Operators who maintain their leases and wells in compliance with applicable statutes and rules will not suffer cancellation of certificates of compliance or be required to pay reconnect fees, and the amendments will have no new reconnect fee impact for operators of wells that have not been produced or used after the certificate of compliance for the well has been canceled.

On the other hand, there may be an additional cost of compliance for non-compliant small and micro-business operators who are now illegally producing or using wells for which the certificate of compliance has been canceled and renewing their organization reports over a period of years without paying reconnect fees. Under the proposed amendments, this will not be possible, because to renew the operator's organization report, the operator will be required to pay the reconnect fee and obtain re-issuance of the certificates of compliance for wells used or produced against severance.

The Commission has no way to estimate the number of reconnect fees for wells that have been produced or used against severance that non-compliant small and micro-business operators may be required to pay, and that are not currently being paid, to renew the operators' organization reports. It is not expected that many small and micro-business operators will be affected because use or production of a well while the certificate of compliance for the well is canceled is a violation of §3.73 of this title, for which administrative penalties of up to $10,000 per violation may be assessed pursuant to §85.3855 of the Texas Natural Resources Code.

The statutory reconnect fee is $300. Assuming that an individual, small business, or micro-business operator incurs, during a given year, one additional $300 reconnect fee, the annual cost to such an organization would be $300 per employee if the organization has one employee, $15 per employee if the organization has 20 employees, and $3.03 per employee if the organization has 99 employees.

Comparable annual cost per employee for the largest businesses potentially required, during a given year, to pay one additional $300 reconnect fee would be $0.60 for an employer of 500 persons and $0.30 for an employer of 1,000 persons.

Assuming that a hypothetical micro-business operator has gross sales of $100,000, and is required to pay one additional reconnect fee annually, the cost of compliance to this operator would be $0.30 per $100 of sales. Assuming further that a hypothetical small business operator has annual gross sales of $500,000, and is required to pay one additional reconnect fee annually, the cost of compliance to this operator would be $0.06 per $100 of sales. For comparative purposes, the cost of compliance to the largest operators of the need to pay one additional reconnect fee annually would be a fraction of one cent per $100 of gross sales.

Comments on the proposed amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. Savage (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §§3.1, 3.58, 3.73, and 3.78 pursuant to Texas Natural Resources Code, §§91.701 - 91.707, as amended by SB 1670, 80th Legislature, Regular Session (2007), effective September 1, 2007, which authorize the Commission to require a certificate of compliance for all wells subject to the Commission's jurisdiction; prohibit a pipeline or other carrier connection with a well for which no certificate of compliance has been issued; authorize the Commission to cancel a certificate of compliance for a well if the operator has violated Texas Natural Resources Code, Title 3, Texas Water Code, §26.131, or Texas Water Code, Chapter 27, Subchapter C, or any Commission rule, order, license, permit, or certificate issued pursuant to those statutes; require a pipeline or other carrier, upon notice, to disconnect from a well for which the certificate of compliance has been canceled; prohibit use of a well for production, injection, or disposal for which the certificate of compliance has been canceled; authorize the Commission to collect a fee for re-issuance of a certificate of compliance that has been canceled; and provide that where an operator uses a well, or reports such use, after the certificate of compliance for the well has been canceled, the Commission may refuse to renew the operator's organization report until the operator has paid the reconnect fee or fees and the certificate of compliance has been reissued. The Commission proposes the amendments pursuant also to Texas Natural Resources Code, §91.142, which requires the filing of annual organization reports by every person or entity subject to the Commission's jurisdiction; Texas Natural Resources Code, §81.051 and §81.052, which authorize the Commission to adopt rules governing oil and gas well and pipeline operators; Texas Natural Resources Code, §§141.011 - 141.012, which authorize the Commission to adopt rules governing geothermal resource wells; Texas Water Code, §§27.031, 27.032, and 27.034, and Texas Natural Resources Code, §91.101, which authorize the Commission to adopt rules governing injection wells; Texas Health and Safety Code, §401.415, which authorizes the Commission to adopt rules governing the disposal of oil and gas NORM waste; Texas Utilities Code, §121.201, which authorizes the Commission to adopt rules governing transportation of gas and gas pipeline facilities; and Texas Government Code, §2001.006, which permits a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Health and Safety Code, §401.415; Texas Natural Resources Code §§81.051, 81.052, 85.202, 86.042, 91.101, 91.142, 91.701 - 91.707, 141.011, and 141.012; Texas Utilities Code, §121.201; and Texas Water Code, §26.131 and §§27.031 - 27.034, are affected by the proposed amendments.

Statutory Authority: Texas Government Code, §2001.006; Texas Health and Safety Code, §401.415; Texas Natural Resources Code §§81.051, 81.052, 85.202, 86.042, 91.101, 91.142, 91.701 - 91.707, 141.011, and 141.012; Texas Utilities Code, §121.201; and Texas Water Code, §26.131 and §§27.031-27.034.

Cross-reference to statutes: Texas Health and Safety Code, Chapter 401; Texas Natural Resources Code, Chapters 81, 85, 86, 91, and 141; Texas Utilities Code, Chapter 121; and Texas Water Code, Chapters 26 and 27.

Issued in Austin, Texas on August 14, 2007.

§3.1. Organization Report; Retention of Records; Notice Requirements.

(a) Filing requirements.

(1) - (2) (No change.)

(3) Each organization performing activities subject to the jurisdiction of the Commission shall maintain a current organization report with the Commission until all duties, obligations, and liabilities incurred pursuant to Commission rules, the Natural Resources Code, Titles 3 (Subtitles A, B, C, and Chapter 111 of Subtitle D) and 5, Texas Health and Safety Code, Chapter 401; Texas Utilities Code, §121.201, and the Water Code, Chapters 26, 27, and 29, are fulfilled.

(4) - (10) (No change.)

(b) - (e) (No change.)

(f) Organization reports shall not be approved unless the organization has complied with the state registration requirements of the Secretary of State [~~and the taxation requirements of the Comptroller of Public Accounts. A tax dispute with the Comptroller of Public Accounts shall not be a basis for disapproving an organization report~~].

(g) Pursuant to Texas Natural Resources Code, §91.706(b), if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been canceled, the Commission may refuse to renew the operator's organization report required by Texas Natural Resources Code, §91.142, until the operator pays the fee required by §3.78(b)(9) of this title (relating to Fees and Financial Security Requirements) and the Commission issues the certificate of compliance required for that well.

§3.58. Certificate of Compliance and Transportation Authority; Operator Reports [~~Oil, Gas, or Geothermal Resource Operator's Reports~~].

(a) Certificate of Compliance and transportation authority.

(1) Each operator who seeks to operate any well subject to the jurisdiction of the Commission [~~wells related to crude oil, natural gas, or geothermal resources~~] shall file with the commission's Austin office a commission form P-4 (certificate of compliance and transportation authority) for each property on which the wells are located certifying that the operator has complied with Texas Natural Resources Code, Title 3; Texas Water Code, §26.131; and Texas Water Code, Chapter 27, and [~~the conservation laws and the oil, gas, and geothermal resources conservation~~] orders, rules, and regulations of the commission pursuant to Texas Natural Resources Code, Title 3; Texas Water Code, §26.131; and Texas Water Code, Chapter 27, in respect to the property. The Commission form P-4 establishes the operator of an oil lease, gas well, or other well; certifies responsibility for regulatory compliance, including plugging wells in accordance with §3.14 of this title (relating to plugging); and identifies gatherers, purchasers, and purchasers' commission-assigned system codes authorized for each well or lease. Operators shall file form P-4 for new oil leases, gas wells, or other wells; recompletions; reclassifications of wells from oil to gas or gas to oil; consolidation, unitization or subdivision of oil leases; or change of gatherer, gas purchaser, gas purchaser system code, operator, field name or lease name. When an operator files a form P-4, the oil and gas division shall review the form for completeness and accuracy. The Commission may require an operator who files a form P-4 for the purpose of changing the designation of an operator for a lease or well to provide to the Commission evidence that the transferee has the right to operate the lease or well. Except as otherwise authorized by the Commission, a transporter (whether the operator or someone else) shall not transport the oil, gas, or geothermal resources from such property until the Commission has approved the certificate of compliance and transportation authority. No certificate of compliance designating or changing the designation of an operator will be approved that is signed, either as transferor or transferee, by a non-employee agent of the organization unless the organization has filed with the commission, on its organization report, the name of the non-employee agent it has authorized to sign such certificates of compliance on its behalf.

(2) - (4) (No change.)

(b) - (d) (No change.)

§3.73. Pipeline Connection; Cancellation of Certificate of Compliance; Severance.

(a) No pipeline or other carrier shall be connected with any [~~oil, gas, or geothermal resources~~] well subject to the jurisdiction of the Commission until the operator of the well provides the pipeline or other carrier [~~operator~~] with a certificate from the Commission that the rules in this title have been complied with. This section shall not prevent a temporary connection with any well in order to take care of production and prevent waste until the operator has a reasonable time, not to exceed 30 days from the date of such connection, within which to obtain such certificate. For purposes of this section, the term "Commission" means the Railroad Commission of Texas, the Director of the Oil and Gas Division, or the Director's delegate.

(b) - (g) (No change.)

(h) Pursuant to Texas Natural Resources Code, §91.705 [~~§85.165~~], upon notice from the Commission to any operator of a pipeline or other carrier connected to any [~~oil, gas, or geothermal resource~~] well subject to the jurisdiction of the Commission that the certificate of compliance applicable to the well has been cancelled by the Commission, the operator of the pipeline or other carrier shall disconnect from or suspend service to the well and shall not reconnect to [~~transport any oil or gas produced from~~] that well until a new certificate of compliance has been issued by the Commission. Pursuant to Texas Natural Resources Code, §85.3855, failure to comply with this subsection may subject a person to a penalty of up to $10,000 per violation.

(i) Pursuant to Texas Natural Resources Code, §91.706(a) [~~§85.166~~], upon notice from the Commission that a certificate of compliance as to any [~~oil, gas, or geothermal resource~~] well has been cancelled as provided in this section, the operator of such well shall not use [~~produce oil, gas, or geothermal resources from~~] that well for production, injection, or disposal until a new certificate of compliance with respect to the well has been issued by the Commission as provided in this section. Pursuant to Texas Natural Resources Code, §85.3855, failure to comply with this subsection may subject a person to a penalty of up to $10,000 per violation.

(j) Pursuant to Texas Natural Resources Code, §91.706(b), if an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been cancelled, the Commission may refuse to renew the operator's organization report required by Texas Natural Resources Code, §91.142, until the operator pays the fee required pursuant to §3.78(b)(9) of this title (relating to Fees and Financial Security Requirements) and the Commission issues the certificate of compliance required for that well.

(k) [~~(j)~~] The provisions of this section shall be cumulative of other Commission actions and procedures relating to violations of state statutes or Commission permits, rules, and orders, including the authority of the Commission to immediately shut in a well or lease, or to direct the operator to shut in a well or lease, when an emergency exists due to pollution or an imminent threat of harm to people or property.

§3.78. Fees and Financial Security Requirements.

(a) (No change.)

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) - (8) (No change.)

(9) If a certificate of compliance for an oil lease or gas well has been canceled for violation of one or more Commission rules, the operator shall submit to the Commission a nonrefundable fee of $300 for each severance or seal order issued for the well or lease before the Commission may reissue the certificate pursuant to §3.58 of this title (relating to Certificate of Compliance and Transportation Authority; Operator Reports [~~Oil, Gas, or Geothermal Resource Producer's Reports~~]) (Statewide Rule 58).

(10) - (14) (No change.)

(c) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas proposes amendments to §8.201, relating to Pipeline Safety Program Fees, to implement provisions of House Bill 1, 80th Texas Legislature (2007), and, specifically, Article VI, Railroad Commission Rider 11, which makes the amounts appropriated from general revenue for State fiscal years 2008 and 2009 for the pipeline safety program and the underground pipeline damage prevention program, as well as other direct and indirect costs for the programs, contingent upon the Commission assessing fees sufficient to generate, during the 2008-2009 biennium, revenue to cover that general revenue appropriation.

The proposed amendments in §8.201(b) change the deadline for filing the DOT Distribution Annual Report, Form 7100.1-1, from 2006 to an annual requirement without a specified year; change the deadline by which the annual pipeline safety program fee is to be paid from April 20, 2007, to an annual requirement of March 15 of each year; and increase the assessment rate from $0.37 to $0.50 annually for each service line reported to be in service at the end of each calendar year. The Commission proposes the increase in the annual service line fee in order meet the requirements of House Bill 1 with respect to funding not only the established pipeline safety program, but the underground pipeline damage prevention program as well, for which the Commission adopted rules that go into effect on September 1, 2007.

Mary McDaniel, Director, Safety Division, has determined that for each year of the first five years that the rule as proposed to be amended will be in effect, there will be fiscal implications for State government. A fee of $0.50 for each of an estimated 4,600,000 service lines (an increase of $0.13 over the current rate of $0.37 per service line), is estimated to increase revenue to the Railroad Commission by $598,000 beginning in the calendar year 2008, and by at least $598,000 in each year of the next four years that the fee remains at $0.50 per service line and there are at least 4,600,000 service lines reported each year. All revenue derived from the pipeline safety program fee, both the $0.50 per service line and the $100 per master metered system, which the Commission is not proposing to increase, has been appropriated to the Commission to supplement the funds received from the federal Office of Pipeline Safety to support both the Commission's established existing pipeline safety program and the Commission's new underground pipeline damage prevention program. If the number of service lines is less than 4,600,000 in either 2008 or 2009, the Commission's revenue will decrease accordingly, and the Commission's appropriation will be reduced as well.

Ms. McDaniel anticipates that there will be additional costs for state government as a result of enforcing or administering the section as amended. The Commission will add five new full-time equivalent employees (FTEs) for the new underground pipeline damage prevention program. The Commission anticipates expenses of $251,915 for salaries; $35,633 for payroll related costs; $8,275 for travel; and $50,710 for other operating costs. In addition, there will be an expenditure of approximately $123,000 for additional salary expense, in each year of the first five years that the proposed amendments will be in effect, and an expenditure of $110,210 for vehicles in the first year that the proposed amendments will be in effect, but not in the second through fifth years. Any remaining funds will be used to make up for an anticipated shortfall in federal funding for the pipeline safety and underground damage prevention programs. There will be no other fiscal implications for State government, because state agency customers of natural gas distribution systems are exempt from payment of the pipeline safety program fee.

There will be fiscal implications for local governments that operate natural gas distribution systems, such as municipalities and government housing authorities; however, these entities are authorized to reimburse themselves by imposing a one-time surcharge to the existing rates charged to their customers. It is possible that there will be a mismatch between the amounts the natural gas distribution system operators remit to the Commission and the amounts they collect from their customers through

the surcharge reimbursement mechanism, but the Commission cannot determine whether any discrepancy will be in favor of the natural gas distribution system operators or the customers.

Ms. McDaniel has also determined that for each year of the first five years that the rule as proposed to be amended will be in effect, the public benefit will be not only the continuation of the Commission's pipeline safety program to ensure public safety with regard to pipeline operations, but the additional benefit of funding support for the underground pipeline damage prevention program, which applies to both pipeline operators and excavators and takes effect on September 1, 2007. The underground pipeline damage prevention program seeks to educate excavators about safe excavation practices, and will have a web site through which persons can report unsafe practices and violations of the Commission's rules.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Pursuant to Texas Government Code, §2006.002(c), Ms. McDaniel has estimated that there will be a cost of compliance for individual, small business, or micro-business natural gas distribution system operators that are currently regulated under the Commission's pipeline safety program. For each natural gas distribution operator, regardless of its business organization, the cost will be an additional $0.13 for each service line reported on the DOT Distribution Annual Report, Form 7100.1-1.

The Commission has determined that it is likely that some natural gas distribution system operators meet the definition of small business or micro-business as set forth in Texas Government Code, §2006.001(1) and (2). For a small business or micro-business operator of a natural gas distribution system that has 1,000 customers, the cost of compliance with §8.201 as amended will be an additional $130 per year. However, this small business or micro-business operator would not incur any additional administrative costs, either for remitting the pipeline safety program fee to the Commission on a timely basis or for assessing the surcharge to customers, because the pipeline safety program fee has been in effect since 2003. The total additional annual cost for this operator is therefore $130. Using the comparison set forth in Texas Government Code, §2006.002(c)(2)(A), cost per employee, a small business or micro-business operator of a natural gas distribution system with five employees would have a net additional annual cost of compliance of $26.00 per employee; with 25 employees, a cost of $5.20 per employee; and with 50 employees, a cost of $2.60 per employee. The operator would be permitted to recover the additional $130 of the pipeline safety program fee through the surcharge to customers, up to $0.50 per service line.

The comparable annual cost per employee of the increased pipeline safety program fee for the largest businesses affected by the proposed amendments to §8.201 would be as follows. A natural gas distribution system operator with 1,000,000 service lines would pay an additional $130,000 annually for the pipeline safety program fee. There would not be any additional administrative costs, either for remitting the pipeline safety program fee to the Commission on a timely basis or for assessing the surcharge to customers, because the pipeline safety program fee has been in effect since 2003. With 500 employees, such a business would have an additional annual per-employee cost of compliance of $260 per employee; with 1,000 employees, $130 per employee; with 5,000 employees, a cost of $26 per employee. The operator would be permitted to recover the additional $130,000 of the pipeline safety program fee through the surcharge to customers, up to $0.50 per service line.

In addition to the cost of compliance for natural gas distribution system operators, there will be a cost of compliance for all individual customers of natural gas distribution systems who will be assessed a surcharge by their provider. The residential or small commercial customer of a natural gas distribution system who has one service line would have an additional annual cost of compliance of $0.13. Commercial and industrial customers of natural gas distribution systems will have additional annual costs of compliance of $0.13 for each service line. State agency customers of natural gas distributions systems are exempt from payment of the pipeline safety program fee.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments should refer to Gas Utilities Docket Number (GUD No.) 9737. The Commission will accept comments until 5:00 p.m. on Monday, October 1, 2007. The Commission finds that a 30-day comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq*.; and Texas Utilities Code, §121.211, which authorizes the Railroad Commission to adopt, by rule, an annual inspection fee not to exceed 50 cents for each service line reported by a natural gas distribution system subject to Chapter 121 on the Distribution Annual Report, Form RSPA F7100.1-1; and House Bill 1, 80th Texas Legislature (2007), Article VI, Railroad Commission Rider 11, which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium, revenue to cover the general revenue appropriation.

Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq*., are affected by the proposed amendments.

Statutory authority: Texas Utilities Code, §§121.201 - 121.211; 49 United States Code Annotated, §§60101, *et seq*.; and House Bill 1, 80th Texas Legislature (2007).

Cross-reference to statute: Texas Utilities Code, Chapter 121; 49 United States Code Annotated, Chapter 601; and House Bill 1, 80th Texas Legislature (2007).

Issued in Austin, Texas on August 14, 2007.

§8.201. Pipeline Safety Program Fees.

(a) (No change.)

(b) The Commission hereby assesses each operator of a natural gas distribution system an annual pipeline safety program fee of $0.50 [~~$0.37~~] for each service (service line) reported to be in service at the end of each calendar year [~~2006~~] by each system operator on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15 of each year[~~, 2007~~].

(1) Each operator of a natural gas distribution system shall calculate the total amount of the annual pipeline safety program fee to be paid to the Commission by multiplying the number of services listed in Part B, Section 3, of Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, due to be filed on March 15 of each year by $0.50[~~, 2007 by $0.37~~].

(2) Each operator of a natural gas distribution system shall remit to the Commission on March 15 of each year [~~April 20, 2007,~~] the amount calculated under paragraph (1) of this subsection.

(3) - (6) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 9. LP-GAS SAFETY RULES
SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §9.26

The Railroad Commission of Texas proposes amendments to §9.26, relating to Insurance Requirements. Specifically, the Commission proposes amendments to update the requirements for certificates of insurance and to delete some references to insurance endorsements.

Proposed amendments in subsection (a)(1) add wording to allow the use of an insurance Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance carrier authorized or accepted by the Texas Department of Insurance. The Figure in subsection (a) includes changes to delete the column entitled "Insurance Policy Endorsement Required" and to add references to the Acord™ form in the column entitled "Form Required." The Commission proposes no changes to the license categories or dollar amounts for the types of coverage. The Commission proposes to delete subsection (b) regarding endorsements.

The proposed amendments in subsection (c), proposed to be re-designated as subsection (b), would delete references to endorsements and clearly state that the licensee shall give the Section notice of 30 calendar days before cancellation of any insurance coverage. The remaining subsections are proposed to be re-designated.

The Commission proposes new subsection (j) requiring each licensee to promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (i). A licensee's failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

The Commission finds that these proposed amendments, and in particular, the Commission's recognition and acceptance of the Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance, will allow more flexibility for the LP-gas industry while still providing the Commission with the necessary information regarding proof of insurance. The Acord™ form was developed by the Association for Cooperative Operations Research and Development (ACORD), a global, non-profit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance, and related financial services industries. Hundreds of insurance and reinsurance companies and thousands of agents and brokers are affiliated with ACORD. Thus, the Commission's acceptance of this standardized form will be efficient while still ensuring that LP-gas licensees meet the insurance requirements for licensure.

Concurrently with these proposed amendments to §9.26, the Commission requests comments on proposed changes to three forms, LPG Form 996A, LPG Form 997A, and LPG Form 998A, as well as the fee calculation sheet that accompanies notices of license renewal. These documents will be published separately in the "In Addition" section of the *Texas Register*. The changes to the forms eliminate obsolete TDI endorsement information and add acceptance of the Acord™ forms universally used by the insurance industry.

Richard Gilbert, assistant director, Gas Services Division, License and Permit Section, has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Gilbert has also determined that the public benefit anticipated as a result of the amendments will be more flexibility for the LP-gas licensees or applicants for license.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a

statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. The Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for any LP-gas licensee, nor does the Commission have data to determine which, if any, LP-gas licensees are "small businesses" or "micro-businesses," as those terms are defined in Texas Government Code, §2006.001; however, for the purposes of Texas Government Code, §2006.002(c), the Commission assumes that there are LP-gas licensees that fall within the definitions of both "small business" and "micro-business." Under the proposed amendments, however, all LP-gas licensees would be able to submit an Acord™ form, in addition to or in lieu of the three forms, LPG Form 996A, LPG Form 997A, and LPG Form 998A that are currently required. Mr. Gilbert has therefore determined that there will be no additional cost to LP-gas licensees as a result of enforcing or administering the rule as proposed to be amended.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to LPG Docket No. 1921. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Gilbert at (512) 463-6935. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public, and §113.097, which requires LP-gas licensees to demonstrate proof of insurance coverage to the Commission and requires the Commission to adopt by rule reasonable amounts of coverage that LP-gas licensees must maintain for motor vehicle bodily injury and property damage liability on each motor vehicle, including trailers and semi-trailers, used to transport LP-gas; for general liability based on the type or types of licensed activities; for workers' compensation for employees under policies of work-related accident, disability, and health insurance, including coverage for death benefits; and for completed operations or products liability insurance, or both, based on the type or types of licensed activities.

Texas Natural Resources Code, §113.051 and §113.097, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §113.051 and §113.097.

Cross reference to statute: Texas Natural Resources Code, Chapter 113.

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§9.26. Insurance and Self-Insurance Requirements.

(a) LP-gas licensees or applicants for license shall comply with the minimum amounts of insurance specified in Table 1 of this section or with the self-insurance requirements in subsection (i) [~~(j)~~] of this section. Before the License and Permit Section of the Gas Services Division (the Section) grants or renews a license, an applicant shall submit either:

Figure: 16 TAC §9.26(a)

(1) a valid certificate of insurance; an insurance Acord™ form; or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance [~~, which shall remain in effect during the entire period that the license is in effect~~]; or

(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (i) [~~(j)~~] of this section.

[~~(b) Certificates of insurance filed with the Section shall have one of the endorsements specified in Table 1 of this section attached to the policy, and the endorsements shall not be canceled without cancellation of the policy to which they are attached.~~]

(b) [~~(c)~~] Each licensee shall [~~endorsement issued and attached to a certificate of insurance requires the insurance carrier, noted as "company" on the certificate of insurance, to~~] give the Section written notice 30 calendar days before the [~~insurance~~] cancellation of any insurance coverage. The 30-day period [~~notice~~] commences on [~~to run from~~] the date the notice is actually received by the Section.

(c) [~~(d)~~] A licensee or applicant for a license that does not employ or contemplate employing any employee in LP-gas activities may file LPG Form 996B in lieu of a certificate of workers' compensation, including employer's liability insurance, or alternative accident and health insurance coverage. The licensee or applicant for license shall file the required insurance certificate with the Section before hiring any person as an [~~a dealership~~] employee.

(d) [~~(e)~~] A licensee, applicant for a license, or an ultimate consumer that does not operate or contemplate operating a motor vehicle equipped with an LP-gas cargo container or does not transport or contemplate transporting LP-gas by vehicle in any manner may file LPG Form 997B in lieu of a certificate of motor vehicle bodily injury and property damage insurance, if this certificate is not otherwise required. The licensee or applicant for a license shall file the required insurance certificate with the Section before operating a motor vehicle equipped with an LP-gas cargo container or transporting LP-gas by vehicle in any manner.

(e) [~~(f)~~] A licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations or products liability insurance, or both, may file LPG Form 998B in lieu of a certificate of completed operations and/or products liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the Section before engaging in any operations that require completed operations and/or products liability insurance.

(f) [~~(g)~~] A licensee or applicant for a license that does not engage in or contemplate engaging in any operations that would be covered by general liability insurance may file LPG Form 998B in lieu of a certificate of general liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the Section before engaging in any operations that require general liability insurance.

(g) [~~(h)~~] A licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in this state as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.

(h) [~~(i)~~] A state agency or institution, county, municipality, school district, or other governmental subdivision shall meet the requirements of this section for workers' compensation, general liability, and/or motor vehicle liability insurance by filing LPG Form 995 with the Section as evidence of self-insurance, if permitted by the Texas Labor Code, Title 5, Subtitle C, and Texas Natural Resources Code, §113.097.

(i) [~~(j)~~] Self-insurance requirements.

(1) This subsection applies to a licensee's or a license applicant's motor vehicle bodily injury and property damage liability coverage and general liability coverage. A licensee or license applicant shall not elect to self-insure for more than 12 consecutive months, exclusive of the six-month period for which a letter of credit is required to remain in effect pursuant to paragraph (4) of this subsection.

(2) A licensee or license applicant desiring to self-insure shall file with the Section a properly completed LPG Form 28, Notice of Election to Self-Insure Per Rule 9.26 (created 11/02) and a properly completed LPG Form 28-A, Bank Declarations Regarding Irrevocable Letter of Credit (created 11/02). The licensee or license applicant shall attach to the LPG Form 28-A any documentation necessary to show that the bank issuing the irrevocable letter of credit meets the requirements in paragraph (5)(E) of this subsection.

(3) The irrevocable letter of credit shall be in an amount that is no less than the total of all minimum insurance coverage amounts required by the Commission in the Table in subsection (a) of this section for every coverage for which the licensee or license applicant seeks to self-insure.

(4) The irrevocable letter of credit shall be valid until the expiration date shown on LPG Form 28, which shall be no sooner than six months after the earlier of either:

(A) the expiration date of the license; or

(B) the effective date of insurance coverage.

(5) A letter of credit commemorated by LPG Form 28-A shall:

(A) be irrevocable during its term;

(B) be payable to the Commission or Commission's designee in part or in full as directed by the Commission in compliance with an order from state or federal court;

(C) include a guarantee from the bank that issues the letter of credit (irrevocable confirmed credit);

(D) not apply to the licensing requirements for worker's compensation insurance including employers liability insurance or alternative accident/health insurance; and

(E) be issued by a federally insured bank authorized to do business in the State of Texas which meets or exceeds the following requirements:

(i) Bank management shall attest that the bank is not subject to any outstanding written enforcement action, agreement, order, capital directive, or prompt corrective action directive issued by a state or federal bank regulatory agency;

(ii) The bank shall be "well capitalized" as defined in federal bank regulatory statutes with:

(I) a total risk-based capital ratio of 10% or greater;

(II) a Tier 1 risk-based capital ratio of 6% or greater; and

(III) a leverage ratio of 5% or greater.

(iii) The bank shall have received a satisfactory or better rating at its most recent Community Reinvestment Act (CRA) examination by a federal bank regulatory agency;

(iv) The bank management shall attest that the full amount of the letter of credit, when added to other indebtedness of the licensee or applicant for license to the bank, is within the bank's regulatory lending limit; and

(v) The issuing bank shall be in good standing with the State Comptroller's Office regarding the payment of franchise taxes and other obligations to the state.

(6) Within 30 days of the occurrence of any incident or accident involving the business activities of a self-insured LP-gas licensee that results in property damage or loss and/or personal injuries, the licensee shall notify the Railroad Commission, Safety Division, in writing of the incident. The licensee shall include in the notification a list of the names and addresses of any individuals known to the licensee who may have suffered losses in the incident. The licensee shall also provide written notice to all such individuals of the licensee's status as being self-insured and of the expiration date of the licensee's letter of credit.

(j) Each licensee shall promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in subsection (i) of this section. Failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Managing Director
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CHAPTER 12. COAL MINING REGULATIONS
SUBCHAPTER G. SURFACE COAL MINING AND RECLAMATION OPERATIONS, PERMITS, AND COAL EXPLORATION PROCEDURES SYSTEMS
DIVISION 2. GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

16 TAC §12.108

The Railroad Commission of Texas proposes to amend §12.108, relating to Permit Fees, to implement provisions of House Bill 1, 80th Texas Legislature (2007), and, specifically, Article VI, Railroad Commission Rider 10, which makes the amounts appropri-

ated from general revenue for State fiscal years 2008 and 2009 to cover the cost of permitting and inspecting coal mining facilities contingent upon the Commission assessing fees sufficient to generate, during the 2008-2009 biennium, revenue to cover the general revenue appropriations.

The Commission proposes to amend the fees set forth in subsection (b) as follows. In paragraph (1), the Commission proposes to decrease the annual fee for each acre of land within a permit area on which coal or lignite was actually removed during a calendar year from the current $160 to $150. In paragraph (2), the Commission proposes to increase the annual fee for each acre of land within a permit area covered by a reclamation bond on December 31st of a year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans), from the current $3.00 to $3.75. Finally, in paragraph (3), the Commission proposes to increase the annual fee for each permit in effect on December 31st of a year from the current $3,550 to $4,200. The Commission anticipates that annual fees at these new amounts will result in revenue of $1,273,000 in each year of the 2008-2009 biennium.

Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, has determined that during each year of the first five years the proposed amendments would be in effect, the net effect on state government will be zero. The Commission's coal mining regulatory program is partially funded with a fifty per cent cost reimbursement grant from the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. The State's share of the cost for implementing this regulatory program, $1,273,000, is funded from fees paid by the regulated coal mining industry. These fees come from two general categories: application fees and annual fees. Application fees are specified in §12.108(a); the Commission does not propose to revise these in this rulemaking.

The total amount in annual fees required to fund this regulatory program was determined by subtracting the total amount of application fees estimated for collection in each year of the 2008-2009 biennium ($64,000) from the estimated $1,273,000 State share cost to fund the program in each year of the 2008-2009 biennium. The remainder of the State's share of the annual expense, $1,209,000, is then allocated for collection from annual fees according to the following distribution: seven per cent for annual permit fees, 37.2 per cent for mined acreage fees, and 55.8 per cent for bonded acreage fees. The proposed annual fee rates were then derived based on the estimated area where coal or lignite will be removed during 2007 and the estimated permit status and bonded acres on December 31, 2007.

The seven per cent to be collected from annual permit fees ($84,000) was divided by 20, the estimated number of permits as of December 31, 2007, to derive the $4,200 individual permit fee proposed in subsection (b)(3). The 37.2 per cent to be collected from mined acreage fees ($450,000) was allocated across 3,000, the number of acres within the permit areas on which coal or lignite will be removed during the calendar year 2007 to derive the $150 acreage fee proposed in subsection (b)(1). Finally, the remaining 55.8 per cent to be collected through the bonded acreage fee was divided by 180,000, the number of acres under bond as of December 31, 2007, to derive the $3.75 per bonded acre fee proposed in subsection (b)(2).

Mr. Hodgkiss has determined that during each year of the first five years the proposed amendments would be in effect will increase the economic cost to the mining industry by a total of $118,000. This is based on a comparison of the revenue that would be generated under the current $160 annual mined acreage fee, the $3 per bonded acre fee, and a fee of $3,550 for each of 20 permits issued. There are no fiscal impacts on local governments.

Mr. Hodgkiss has determined that the public benefit resulting from the new fee structure for coal mining activities is the alignment of fees paid by the coal mining industry with the costs incurred by the Railroad Commission, as required by House Bill 1.

In accordance with Texas Government Code, §2006.002, Mr. Hodgkiss has determined that there will be no adverse economic effects on small businesses or micro-businesses because of the proposed amendments because there are no small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001, holding coal mining permits from the Commission. The proposed amendments also will not affect a local economy; therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at http://www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us and should refer to SMRD Docket No. 2-07. Comments will be accepted for 30 days after publication in the *Texas Register*. The Commission finds that a 30-day comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Melvin Hodgkiss, Director, Surface Mining and Reclamation Division, at (512) 463-6901. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Natural Resources Code, §134.013, which authorizes the Commission to promulgate rules pertaining to surface coal mining operations; Texas Natural Resources Code, §134.055, which authorizes the Commission to obtain annual fees and mandates the fee structure in §12.108; and House Bill 1, 80th Texas Legislature (2007), Article VI, Railroad Commission Rider 10, which requires the Commission to assess fees sufficient to generate during the 2008-2009 biennium, revenue to cover the general revenue appropriations.

Texas Natural Resources Code, §134.013 and §134.055, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §134.013 and §134.055; House Bill 1, 80th Texas Legislature (2007).

Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055; House Bill 1, 80th Texas Legislature (2007).

Issued in Austin, Texas on August 14, 2007.

§12.108. Permit Fees.

(a) (No change.)

(b) Annual Fees. In addition to application fees required by this section, each permittee shall pay to the Commission the following annual fees due and payable not later than March 15th of the year following the year for which these fees are applicable:

(1) a fee in the amount of $150 [~~$160~~] for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year;

(2) a fee of $3.75 [~~$3~~] for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans); and

(3) a fee of $4,200 [~~$3,550~~] for each permit in effect on December 31st of the year.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Managing Director
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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)
SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §13.62

The Railroad Commission of Texas proposes amendments to §13.62, relating to Insurance Requirements. Specifically, the Commission proposes amendments to update the requirements for certificates of insurance and to delete some references to insurance endorsements.

In subsection (a), the Commission proposes to move the Figure, which is currently in subsection (i), to subsection (a) and change a cross-reference. The Figure includes changes to delete the column entitled "Insurance Policy Endorsement Required" and to add references to the Acord™ form in the column entitled "Form Required." The Commission proposes no changes to the license categories or dollar amounts for the types of coverage.

In subsection (b), the Commission proposes to clarify the wording and to allow the use of an insurance Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance carrier authorized or accepted by the Texas Department of Insurance. The Commission proposes to delete other unnecessary wording.

In subsection (d), some references are changed from subsection (i)(5) to subsection (a), because of the Figure being moved to subsection (a). The Commission proposes new paragraphs (4) and (5) to clarify requirements that are on the Figure with regard to completed operations or products liability insurance. New paragraph (5) regarding accident and health insurance is similar to subsection (j), which the Commission proposes to delete.

The Commission proposes to delete subsection (g) which refers to endorsements.

Current subsection (h) is redesignated as subsection (g) and wording is proposed to clearly state that the licensee shall give the Section notice of 30 calendar days before cancellation of any insurance coverage.

With the wording proposed in subsection (g), the Commission proposes to delete subsection (i) because it is unnecessary.

The Commission proposes new subsection (i) requiring each licensee to promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §13.63 of this title, relating to Qualification as Self-Insured. A licensee's failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

The Commission finds that these proposed amendments, and in particular, the Commission's recognition and acceptance of the Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance, will allow more flexibility for the CNG industry while still providing the Commission with the necessary information regarding proof of insurance. The Acord™ form was developed by the Association for Cooperative Operations Research and Development (ACORD), a global, non-profit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance, and related financial services industries. Hundreds of insurance and reinsurance companies and thousands of agents and brokers are affiliated with ACORD. Thus, the Commission's acceptance of this standardized form will be efficient while still ensuring that CNG licensees meet the insurance requirements for licensure.

Concurrently with these proposed amendments to §13.62, the Commission requests comments on proposed changes to three forms, CNG Form 1996A, CNG Form 1997A, and CNG Form 1998A . These forms will be published separately in the "In Addition" section of the *Texas Register.* The changes to the forms eliminate obsolete TDI endorsement information and add acceptance of the Acord™ forms universally used by the insurance industry.

Richard Gilbert, assistant director, Gas Services Division, License and Permit Section, has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Gilbert has also determined that the public benefit anticipated as a result of the amendments will be more flexibility for the CNG licensees or applicants for license.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement

of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. The Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for any CNG licensee, nor does the Commission have data to determine which, if any, CNG licensees are "small businesses" or "micro-businesses," as those terms are defined in Texas Government Code, §2006.001; however, for the purposes of Texas Government Code, §2006.002(c), the Commission assumes that there are LP-gas licensees that fall within the definitions of both "small business" and "micro-business." Under the proposed amendments, however, all CNG licensees would be able to submit an Acord™ form, in addition to or in lieu of the three forms, CNG Form 1996A, CNG Form 1997A, and CNG Form 1998A that are currently required. Mr. Gilbert has therefore has determined that there will be no additional cost to CNG licensees as a result of enforcing or administering the rule as proposed to be amended.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to LPG Docket No. 1921. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Gilbert at (512) 463-6935. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public, and §116.036, which authorizes the Commission to adopt rules establishing specific requirements for insurance coverage and evidence of such coverage.

Texas Natural Resources Code, §116.012 and §116.036, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §116.012 and §116.036.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on August 14, 2007.

§13.62. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 116, the Railroad Commission of Texas has adopted the minimum amounts of insurance required of those persons or businesses licensed by the License and Permit Section of the Gas Services Division (the Section) to do business in Texas. The minimum amounts of insurance and other insurance requirements are specified in Table 1 [~~in subsection (i)(5)~~] of this section.
Figure: 16 TAC §13.62(a)

(b) Before the [~~The~~] Section grants or renews [~~shall not issue~~] a license, [~~authorizing activities under §13.61 of this title (relating to Licensing), or renew an existing license unless~~] the applicant shall submit either: [~~for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state, or provides, on approval of the Section, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of the Texas Insurance Code, Article 1.14-2, and rules adopted by the Texas Department of Insurance under that article.~~]

(1) a valid certificate of insurance; an insurance Acord™ form; or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements in §13.63 of this title (relating to Qualification as Self-Insured).

(c) (No change.)

(d) Except as provided in the column relating to Statements in Lieu of Insurance Certificates in Table 1 in subsection (a)[~~(i)(5)~~] of this section, and paragraphs (1) - (5) [~~(1) - (3)~~] of this subsection, the types and amounts of insurance specified in subsection (a) [~~(i)(5)~~] of this section are required while engaging in any of the activities set forth in this section or any activity incidental thereto.

(1) - (3) (No change.)

(4) A licensee or applicant for a license that does not engage in or contemplate engaging in any CNG operations that would be covered by completed operations or products liability insurance, or both, may file CNG Form 1998B in lieu of a certificate of completed operations and/or products liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the Section before engaging in any operations that require completed operations and/or products liability insurance.

(5) A licensee may protect its employees by obtaining accident and health insurance coverage from an insurance company authorized to write such policies in this state as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.

(e) - (f) (No change.)

[~~(g) Each certificate of insurance filed with the Section must have one of the endorsements specified in subsection (i)(5) of this section attached to the policy, and may not be cancelled without cancellation of the policy to which it is attached.~~]

(g) [~~(h)~~] Each licensee shall [~~endorsement issued and attached to a certificate of insurance noted in subsection (g) of this section requires the insurance carrier, noted as company on the certificate of insurance to~~] give the Section [~~30 days'~~] written notice 30 calendar days before the [~~insurance~~] cancellation of any insurance coverage. The 30-day period [~~30 days' notice~~] commences on [~~to run from~~] the date the notice is actually received by the Section.

[~~(i) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:~~]

[~~(1) receipt by the Section of written notice stating the insurer's intent to cancel a policy of insurance and giving a minimum of 30 days' notice before the insurance cancellation;~~]

[~~(2) receipt by the Section of an acceptable replacement insurance certificate;~~]

[~~(3) voluntary surrender of a license and the rights and privileges conferred by the license;~~]

~~[(4) receipt by the Section of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the Section; or]~~

~~[(5) the Railroad Commission of Texas' cancellation by order or after hearing.]~~
~~[Figure: 16 TAC §13.62(i)(5)]~~

~~[(j) Notwithstanding the requirement specified in Table 1 of this section that each licensee carry a policy of workers' compensation insurance, the licensee may protect its employees by obtaining accidental insurance coverage from an insurance company authorized to write such policies in this state as an alternative to workers' compensation coverage. The alternative coverage shall be in the amounts specified in Table 1 of this section.]~~

(h) [~~(k)~~] A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements relating to general liability and/or motor vehicle liability insurance or workers' compensation coverage by submitting evidence of self-insurance that complies with the requirements of §13.63 of this title (relating to Qualification as Self-Insured).

(i) Each licensee shall promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §13.63 of this title (relating to Qualification as Self-Insured). Failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §14.2031

The Railroad Commission of Texas proposes amendments to §14.2031, relating to Insurance Requirements. Specifically, the Commission proposes amendments to update the requirements for certificates of insurance and to delete some references to insurance endorsements.

The proposed amendment in subsection (a) is found in the Figure, which includes changes to delete the column entitled "Insurance Policy Endorsement Required" and to add references to the Acord™ form in the column entitled "Form Required." The Commission proposes no changes to the license categories or dollar amounts for the types of coverage.

Proposed amendments in subsection (b) add wording to allow the use of an insurance Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance carrier authorized or accepted by the Texas Department of Insurance. Obsolete wording in subsection (b)(1), (2), and (5) is proposed to be deleted.

The Commission proposes amendments in subsection (c) to delete references to endorsements and to clearly state that the licensee shall give the Section notice of 30 calendar days before cancellation of any insurance coverage.

The Commission proposes new subsection (i) requiring each licensee to promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §14.2034, relating to Self-Insurance Requirements. A licensee's failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

The Commission finds that these proposed amendments, and in particular, the Commission's recognition and acceptance of the Acord™ form or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance, will allow more flexibility for the LNG industry while still providing the Commission with the necessary information regarding proof of insurance. The Acord™ form was developed by the Association for Cooperative Operations Research and Development (ACORD), a global, non-profit insurance association whose mission is to facilitate the development and use of standards for the insurance, reinsurance, and related financial services industries. Hundreds of insurance and reinsurance companies and thousands of agents and brokers are affiliated with ACORD. Thus, the Commission's acceptance of this standardized form will be efficient while still ensuring that LNG licensees meet the insurance requirements for licensure.

Concurrently with these proposed amendments to §14.2031, the Commission requests comments on proposed changes to three forms, LNG Form 2996A, LNG Form 2997A, and LNG Form 2998A. These forms will be published separately in the "In Addition" section of the *Texas Register*. The changes to the forms eliminate obsolete TDI endorsement information and add acceptance of the Acord™ forms universally used by the insurance industry.

Richard Gilbert, assistant director, Gas Services Division, License and Permit Section, has determined that for each year of the first five years the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Gilbert has also determined that the public benefit anticipated as a result of the amendments will be more flexibility for the LNG licensees or applicants for license.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce

the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales. The Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for any LNG licensee, nor does the Commission have data to determine which, if any, LNG licensees are "small businesses" or "micro-businesses," as those terms are defined in Texas Government Code, §2006.001; however, for the purposes of Texas Government Code, §2006.002(c), the Commission assumes that there are LNG licensees that fall within the definitions of both "small business" and "micro-business." Under the proposed amendments, however, all LNG licensees would be able to submit an Acord™ form, in addition to or in lieu of the three forms, LNG Form 2996A, LNG Form 2997A, and LNG Form 2998A that are currently required. Mr. Gilbert has therefore has determined that there will be no additional cost to LNG licensees as a result of enforcing or administering the rule as proposed to be amended.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to LPG Docket No. 01921. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Gilbert at (512) 463-6935. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public, and §116.036, which authorizes the Commission to adopt rules establishing specific requirements for insurance coverage and evidence of such coverage.

Texas Natural Resources Code, §116.012 and §116.036, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §116.012 and §116.036.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas on August 14, 2007.

§14.2031. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 116, the Commission has adopted the minimum amounts of insurance for LNG licensees authorized by the State of Texas specified in Table 1 of this section.
Figure: 16 TAC §14.2031(a)

(b) Before the License and Permit Section of the Gas Services Division (the Section) grants or renews a license, the applicant shall submit either: [~~A licensee or applicant for license shall file a valid certificate of insurance as proof of insurance before the Commission grants or renews a license.~~]

(1) a valid certificate of insurance; an insurance Acord™ form; or any other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance. The certificates or forms must be issued by an insurance company authorized or accepted by the Texas Department of Insurance; or

(2) properly completed documents demonstrating the applicant's compliance with the self-insurance requirements in §14.2034 of this title (relating to Self-Insurance Requirements).

[~~(1) Certificate of insurance shall be valid only when issued by an insurance carrier authorized to do business in Texas, or by a surplus lines insurer that meets the requirements of the Texas Insurance Code, article 1.14-2, and rules adopted by the Texas Department of Insurance under that article.~~]

[~~(2) Certificates of insurance filed with the Commission shall have one of the endorsements specified in Table 1 of subsection (a) of this section attached to the policy. Endorsements may not be cancelled without cancellation of the attached policy.~~]

(3) - (4) (No change.)

[~~(5) Cancellation of a certificate of insurance becomes effective if:~~]

[~~(A) the Commission receives written notice stating the insurer's intent to cancel a policy of insurance and giving a minimum of 30 calendar days' notice before such cancellation;~~]

[~~(B) the Commission receives an acceptable replacement certificate of insurance;~~]

[~~(C) the licensee voluntarily surrenders a license and the rights and privileges conferred by the license;~~]

[~~(D) the Commission receives a statement made by the licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of insurance required for those operations are filed with the Commission; or~~]

[~~(E) the Railroad Commission of Texas issues an order following a hearing related to a certificate of insurance.~~]

(c) Each licensee shall [~~endorsement issued and attached to a certificate of insurance shall require the insurance carrier, noted as "company" on the certificate of insurance, to~~] give the Section written notice 30 calendar days [~~Commission 30 days' written notice~~] before the [~~insurance~~] cancellation. The 30-day period [~~notice~~] commences on [~~from~~] the date the notice is actually received by the Section [~~Commission receives the notice~~].

(d) - (h) (No change.)

(i) Each licensee shall promptly notify the Commission of any change in insurance coverage or insurance carrier by filing a properly completed revised certificate of insurance; insurance Acord™ form; other form prepared and signed by the insurance carrier that contains all the information required by the certificate of insurance; or documents demonstrating the applicant's compliance with the self-insurance requirements set forth in §14.2034 of this title (relating to Self-Insurance Requirements). Failure to promptly notify the Commission of a change in the status of insurance coverage or insurance carrier may result in an enforcement action and an administrative penalty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Mary Ross McDonald
Managing Director
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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §25.239

The Public Utility Commission of Texas (commission) proposes new §25.239, relating to Transmission Cost Recovery Factor for Certain Electric Utilities. The proposed new section will set forth the mechanism by which an electric utility that operates solely outside of the Electric Reliability Council of Texas (ERCOT) in areas of this state included in the Southwest Power Pool or the Western Electricity Coordinating Council and that owns or operates transmission facilities can request annual recovery of its reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges, as allowed by Public Utility Regulatory Act (PURA) §36.209. PURA §36.209, Recovery by Certain Non-ERCOT Utilities of Certain Transmission Costs, added by HB 989 of the 79th Legislature, Regular Session (2005), permits the commission, after notice and hearing, to allow an electric utility to recover on an annual basis its reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the electric utility under a tariff approved by a federal regulatory authority, to the extent that the costs have not otherwise been recovered. Further, PURA §36.209 specifies that the commission may allow the electric utility to recover only the costs allocable to retail customers in the state, and may not allow the electric utility to over-recover costs. Project Number 33253 is assigned to this proceeding.

Ms. Lauren Damen, Senior Retail Market Analyst, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Damen has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be more timely matching between the incurrence of costs for transmission infrastructure improvement and changes in wholesale transmission charges and the recovery of those costs by certain electric utilities. Better matching costs to their recovery should provide additional incentives for utilities to make transmission investment that is needed to improve customer service and to facilitate meeting the state's renewable energy goals. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Damen has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, October 16, 2007, at 9:30 a.m. The request for a public hearing must be received within 31 days after publication.

Comments on the proposed new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 33253.

In addition to the proposed new language, the commission requests that parties submit comments on the following questions:

1) Should the commission establish a threshold for the establishment of a transmission cost recovery factor (TCRF)? If so, what should the threshold be?

2) Should the commission establish a threshold for revision of the TCRF in which the approved transmission charges and transmission investment costs must exceed a set amount or have decreased by a set amount for the TCRF to be revised? If so, what should that threshold be?

3) Should the rule specify whether increased revenue resulting from load growth should be considered in determining whether the electric utility is recovering its transmission costs? Please explain.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §36.209 which grants the commission the authority to allow certain electric utilities that operate solely outside of ERCOT, to recover on an annual basis reasonable and necessary expenditures for transmission infrastructure improvement costs and changes in wholesale transmission charges to the extent that the costs or charges have not otherwise been recovered.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §36.209.

§25.239. Transmission Cost Recovery Factor for Certain Electric Utilities.

(a) Application. The provisions of this section apply to an electric utility that operates solely outside of the Electric Reliability Council of Texas in areas of Texas included in the Southwest Power Pool or the Western Electricity Coordinating Council and that owns or operates transmission facilities.

(b) Definitions.

(1) Approved transmission charges (ATC)--Wholesale transmission charges approved by a federal regulatory authority that are not being recovered through the electric utility's other retail or wholesale rates and that are appropriately allocated to Texas retail customers. The charges may relate to the use of transmission facilities owned and operated by another transmission service provider or regional transmission organization, including administrative fees but not including dispatch fees, congestion charges, costs incurred to hedge congestion charges, or ancillary service charges.

(2) Transmission invested costs (TIC)--The investment costs to the electric utility associated with new transmission facilities and upgrading transmission facilities.

(c) Recovery authorized. The commission, after notice and hearing, may allow an electric utility to recover its reasonable and necessary costs for transmission infrastructure improvement and changes in wholesale transmission charges to the electric utility under a tariff approved by a federal regulatory authority to the extent that the costs or charges have not otherwise been recovered and are incurred after December 31, 2005. Any such recovery shall be made through the use of a transmission cost recovery factor (TCRF) approved by an order of the commission. The TCRF shall be calculated pursuant to subsection (d) of this section. If a utility has not had a base rate proceeding with a final order issued after December 2005, the utility shall not be eligible for recovery under this provision without first obtaining a final order in a base rate proceeding.

(d) Transmission cost recovery factor (TCRF). The TCRF shall be determined by the following formula:
Figure: 16 TAC §25.239(d)

(e) Transmission cost recovery factor revenue requirement (RR). For an electric utility subject to this section, the transmission cost recovery factor revenue requirement (RR) shall be calculated by using the following formula:
Figure: 16 TAC §25.239(e)

(f) Setting and updating the TCRF. An electric utility that is subject to this section may file an application to set or amend a TCRF in a general base rate case for the utility or a separate proceeding for that purpose. The commission staff may also file an application to amend a TCRF. An electric utility may not apply to amend its TCRF more frequently than once each calendar year. In a docket in which the TCRF is amended, the commission may order the refund of any previous over-recovery, but the commission shall not order the surcharge of any under-recovery. An over-recovery shall be considered to have occurred if the revenues from the TCRF were greater than the costs that the TCRF was intended to recover.

(g) TCRF forms. The commission may develop forms for TCRF applications and for monitoring the revenues from a TCRF. If the commission develops and approves such forms, an electric utility shall use the forms as required by the instructions accompanying the form.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703659
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.3

The Texas Higher Education Coordinating Board proposes amendments to §4.3 concerning limitations on the number of courses that may be dropped under certain circumstances by undergraduate students. These amendments were first adopted on an emergency basis at the Coordinating Board's July 19, 2007 meeting under the provisions of Senate Bill 1231 of the 80th Texas Legislature. The proposed amendments add a definition of a "dropped course" and renumbers the existing definitions to accommodate the new definition in alphabetical order.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect the fiscal implications to state or local government as a result of this rule change would be that Coordinating Board data indicates that approximately 7% of semester credit hours (SCH) for which students have enrolled at general academic teaching institutions remains not completed at the end of the semester; for community colleges the figure is about 14%. The uncompleted credit hours include courses given a grade of "incomplete;" courses dropped as a result of a student withdrawing from the institution; and courses dropped by the student after the census date, and before the deadline for such drops. The Coordinating Board does not collect information regarding dropped courses for individual students or for aggregated student cohorts. It is not possible to determine from THECB data how many of those SCH left uncompleted each semester are credit hours that will be affected by the new statute and rules; thus is it not possible to predict any saving or cost to state and local government or to individual institutions. The Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) has voiced a concern regarding the expense of modifying student information system software to track courses that are dropped under the conditions enumerated in SB 1231, but has provided no cost estimate. The modifications needed to track dropped courses from one institution to another for students who transfer was identified as a significant issue and po-

tential cost. Another concern expressed has been the ongoing cost to each institution for monitoring each dropped course, determining whether it can be exempted or not, and enacting a policy and procedures for an appeals process. These ongoing costs, added to the initial costs to develop an inter-institutional tracking system, will pose a substantial strain on existing resources, and a number of institutional representatives have expressed their concerns even prior to the official comment period.

Dr. Stafford has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be in ensuring the timely progress of undergraduate students toward degree completion. There is no effect on small businesses. As outlined above, there are significant anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joe Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or joe.stafford@thecb.state.tx.us Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, §51.907(e), enacted by SB 1231 (80th Regular Session, Texas Legislature), §1. The amendments were first heard at the July 2007 Board meeting for emergency adoption through authorization in SB 1231, §5.

The amendments will implement the provisions of SB 1231 §1, which establishes Texas Education Code §51.907.

§4.3. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (10) (No change.)

(11) Dropped Course--A course in which an undergraduate student at an institution of higher education has enrolled for credit, but did not complete, under these conditions:

(A) the student was able to drop the course without receiving a grade or incurring an academic penalty;

(B) the student's transcript indicates or will indicate that the student was enrolled in the course past the deadline to add and drop prior to the census date; and

(C) the student is not dropping the course in order to withdraw from the institution.

(12) [~~(11)~~] Degree program--Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a degree from an institution of higher education.

(13) [~~(12)~~] Faculty or professional staff of an institution of higher education--A non-classified, full-time employee who is a member of the faculty or staff and whose duties include teaching, research, administration or performing professional services, including professional library services.

(14) [~~(13)~~] Fiscal year--The State of Texas' fiscal year, September 1 through August 31.

(15) [~~(14)~~] Institution of higher education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(16) [~~(15)~~] Interdisciplinary baccalaureate degrees--The Bachelor of General Studies degree (defined in paragraph (4) of this section) and such general degrees as liberal arts or humanities. These broad-based degrees vary in the amount of prescriptive structure but share the characteristics of flexibility for the student and interdisciplinary course selection.

(17) [~~(16)~~] Non-classified--An employee whose position is not controlled by the institution's classified personnel system or a person employed in a similar position if the institution does not have a classified personnel system.

(18) [~~(17)~~] Religious holy day--A holy day observed by a religion whose places of worship are exempt from property taxation under the Texas Tax Code, §11.20.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703741
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2007
For further information, please call: (512) 427-6114

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19 TAC §4.10

The Texas Higher Education Coordinating Board proposes a new §4.10 concerning limitations on the number of courses that may be dropped under certain circumstances by undergraduate students. This rule was first adopted on an emergency basis at the Coordinating Board's July 19, 2007 meeting under the provisions of Senate Bill 1231 of the 80th Texas Legislature. The new §4.10 describes situations under which a student would be permitted to drop more than the six courses allowed by the provisions of §1 of SB 1231 (80th Regular Session, Texas Legislature), as part of the provisions of a new section of the Texas Education Code, §51.907.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect the fiscal implications to state or local government as a result of this rule change would be that Coordinating Board data indicates that approximately 7% of semester credit hours (SCH) for which students have enrolled at general academic teaching institutions remains not completed at the end of the semester; for community colleges the figure is about 14%. The uncompleted credit hours include courses given a grade of "incomplete;" courses dropped as a result of a student withdrawing from the institution; and courses dropped by the student after the census date, and before the deadline for such drops. The Coordinating Board does not collect information regarding dropped courses for individual students or for aggregated student cohorts. It is not possible to determine from THECB data how many of those SCH left uncompleted each semester are credit hours that will be affected by the new statute and rules; thus is it not possible to predict any saving or cost to state and local government or to individual institutions. The

Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) has voiced a concern regarding the expense of modifying student information system software to track courses that are dropped under the conditions enumerated in SB 1231, but has provided no cost estimate. The modifications needed to track dropped courses from one institution to another for students who transfer was identified as a significant issue and potential cost. Another concern expressed has been the ongoing cost to each institution for monitoring each dropped course, determining whether it can be exempted or not, and enacting a policy and procedures for an appeals process. These ongoing costs, added to the initial costs to develop an inter-institutional tracking system, will pose a substantial strain on existing resources, and a number of institutional representatives have expressed their concerns even prior to the official comment period.

Dr. Stafford has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be in ensuring the timely progress of undergraduate students toward degree completion. There is no effect on small businesses. As outlined above, there are significant anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joe Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or joe.stafford@thecb.state.tx.us Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, §51.907(e), enacted by SB 1231 (80th Regular Session, Texas Legislature), §1. The new section was first heard at the July 2007 Board meeting for emergency adoption through authorization in SB 1231, §5.

The new section of rules will implement the provisions of SB 1231 §1, which establishes Texas Education Code §51.907.

§4.10. Limitations on the Number of Courses That May Be Dropped under Certain Circumstances by Undergraduate Students.

(a) Beginning with the fall 2007 academic term, and applying to students who enroll in higher education for the first time during the fall 2007 academic term or any term subsequent to the fall 2007 term, an institution of higher education may not permit an undergraduate student a total of more than six dropped courses, including any course a transfer student has dropped at another institution of higher education, unless:

(1) the institution has adopted a policy under which the maximum number of courses a student is permitted to drop is less than six; or

(2) the student shows good cause for dropping more than that number, including but not limited to a showing of:

(A) a severe illness or other debilitating condition that affects the student's ability to satisfactorily complete the course;

(B) the student's responsibility for the care of a sick, injured, or needy person if the provision of that care affects the student's ability to satisfactorily complete the course;

(C) the death of a person who is considered to be a member of the student's family or who is otherwise considered to have a sufficiently close relationship to the student that the person's death is considered to be a showing of good cause;

(D) the active duty service as a member of the Texas National Guard or the armed forces of the United States of either the student or a person who is considered to be a member of the student's family or who is otherwise considered to have a sufficiently close relationship to the student that the person's active military service is considered to be a showing of good cause;

(E) the change of the student's work schedule that is beyond the control of the student, and that affects the student's ability to satisfactorily complete the course; or

(F) other good cause as determined by the institution of higher education.

(b) For purposes of this section, a "member of the student's family" is defined to be the student's father, mother, brother, sister, grandmother, grandfather, aunt, uncle, nephew, niece, first cousin, step-parent, or step-sibling; a "person who is otherwise considered to have a sufficiently close relationship to the student" is defined to include any other relative within the third degree of consanguinity, plus close friends, including but not limited to roommates, housemates, classmates, or other persons identified by the student for approval by the institution, on a case-by-case basis.

(c) Each institution of higher education shall adopt a policy and procedure for determining a showing of good cause as specified in subsection (a) of this section and shall provide a copy of the policy to the Coordinating Board.

(d) Each institution of higher education shall publish the policy adopted under this section in its catalogue and other print and Internet-based publications as appropriate for the timely notification of students.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703742
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2007
For further information, please call: (512) 427-6114

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SUBCHAPTER I. NURSING EDUCATION PERFORMANCE INITIATIVE

19 TAC §§4.181 - 4.183

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§4.181 - 4.183, concerning an initiative to promote the retention and graduation of students enrolled in initial licensure nursing programs and to recognize those programs that achieve a graduation rate of 85 percent or more. The proposed changes are in response to S.B. 139, 80th Texas Legislature.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that, for each year of the first five years the proposed new sections are in effect, there will not be any significant fiscal implications to state or local government as a result of these proposed new rules.

Dr. Stafford has also determined that, for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of administering the new sections would be in ensuring that a greater number of students would graduate from initial licensure nursing programs, thus helping to relieve the state's nursing shortage. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or joe.stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §61.0901, which provide the Coordinating Board with the authority to establish rules for the grant programs.

The proposed new sections affect the Texas Education Code, §61.0901.

§4.181. Purpose and Authority.

The purpose of this subchapter is to describe the Board's initiative to promote the retention and graduation of students enrolled in initial licensure nursing programs and to recognize those programs that achieve a graduation rate of 85 percent or more. The Board is authorized to establish rules for this initiative under Texas Education Code §61.0901.

§4.182. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--Commissioner of Higher Education.

(3) Initial licensure program--a sequence of nursing courses and learning experiences that prepares students for initial licensure as registered nurses.

(4) Nursing program--an educational entity of an institution of higher education or hospital that offers the courses and learning experiences of the initial licensure program.

(5) Institution of Higher Education--a public or independent university, community college or health-related institution that offers an initial licensure program that is approved by the Texas Board of Nursing.

(6) Hospital--a public or private hospital that offers an initial licensure program that is approved by the Texas Board of Nursing.

(7) Graduation rate--a calculation by the Texas Higher Education Coordinating Board that represents the percentage of first-time full-time students enrolled in an initial licensure program in a predefined academic cohort who are reported as graduates of the initial licensure program within:

(A) 36 months for generic initial licensure programs.

(B) 18 months for licensed vocational nurse to initial licensure transition programs.

(8) Best practices--strategies, activities or approaches that have been shown through research and evaluation to be effective and/or efficient.

§4.183. Nursing Education Performance Recognition Program.

The Board shall recognize nursing programs that are successful in retaining and graduating students from initial licensure programs:

(1) Eligibility for Recognition. To be eligible for Board recognition, a nursing program must:

(A) have an 85 percent graduation rate for the most current year for which rates are calculated by the Board.

(B) have an 85 percent NCLEX pass rate for the most current period for which pass rates are available from the Texas Board of Nursing.

(C) demonstrate best practices for retaining and graduating students from initial licensure programs as determined by the Board.

(2) Calculation of Graduation Rate. Board shall calculate graduation rates each year using admission and graduation data submitted by the Registrar of each institution of higher education. Institutions may review the preliminary results of the Board's calculation but may not submit revised data for calculation unless approved by the Commissioner.

(3) Demonstration of Best Practices:

(A) The nursing program shall:

(i) demonstrate to the Board through data collection efforts and analysis the specific strategies and activities that have contributed to a graduation and NCLEX pass rate of 85 percent or higher.

(ii) submit a plan for disseminating information about the best practices to nursing programs in the state.

(B) The Commissioner shall make the final determination of whether or not the program has demonstrated best practices.

(4) Method of Recognition. Nursing programs that meet eligibility requirements for recognition will be reported to the Texas Board of Nursing, Governor, and Texas Legislature each year and the names of their institutions will be posted on the Board's website. Recognized nursing programs are also eligible for incentive funding that shall be used only to increase enrollments and the number of graduates from initial licensure programs and to promote best practices in the state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703691
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2007
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §§5.21 - 5.23

The Texas Higher Education Coordinating Board proposes amendments to §§5.21, 5.22, and 5.23 concerning Rules Applying to Public Universities and/or Health-Related Institutions of Higher Education in Texas. Specifically, these amendments will add the three public colleges that are authorized to offer baccalaureate degrees. These proposed amendments add a definition for selected public colleges that recognizes those community colleges that are statutorily authorized to offer baccalaureate degrees in Texas. Also the change requires selected community colleges to follow the preliminary authority requirements before proposing new baccalaureate degree programs. Although we already require that public four-year higher education institutions secure preliminary authority prior to submitting proposals for bachelor's, master's and doctoral degree programs, no rule exists for community college that offer bachelor's degrees. These changes will incorporate community colleges for bachelor degree review.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of this rule change.

Dr. Stafford has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be in ensuring the need and quality of new degree program offerings. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or joe.stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §130.0012, which provides the Coordinating Board with authority for the selected public colleges to offer baccalaureate degrees in Texas.

The amendments affect the Texas Education Code, §130.0012.

§5.21. Purpose.

The purpose of this subchapter is to implement rules regarding the development of the role and mission for each public institution of higher education in Texas and for periodic review of the role and mission statements, the table of programs, and all degree and certificate programs offered by a public institution of higher education. Section 5.24(a) of this title (relating to Criteria and Approval of Mission Statements and Tables of Programs) applies to selected Public Colleges.

§5.22. Authority.

The authority for this subchapter is found in Texas Education Code, §§130.0012, 61.002(a) and (b) and Texas Education Code, §§61.051(d) and (e).

§5.23. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (10) (No change.)

(11) Selected Public Colleges--Those public colleges authorized to offer baccalaureate degrees in Texas.

(12) [~~(11)~~] Statutory mission description--A statement of an institution's mission or purpose that is established directly in statute.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703743
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2007
For further information, please call: (512) 427-6114

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SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES

19 TAC §§5.41 - 5.43

The Texas Higher Education Coordinating Board proposes amendments to §§5.41, 5.42, and 5.43 concerning Rules Applying to Public Universities and/or Health-Related Institutions of Higher Education in Texas. Specifically, these amendments will add the three public colleges that are authorized to offer baccalaureate degrees. These proposed amendments add a definition for selected public colleges that recognizes those community colleges that are statutorily authorized to offer baccalaureate degrees in Texas. Also the change requires selected community colleges to follow the preliminary authority requirements before proposing new baccalaureate degree programs. Although we already require that public four-year higher education institutions secure preliminary authority prior to submitting proposals for bachelor's, master's and doctoral degree programs, no rule exists for community college that offer bachelor's degrees. These changes will incorporate community colleges for bachelor degree review.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of this rule change.

Dr. Stafford has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be in ensuring the need and quality of new degree program offerings. There is no effect on small businesses. There are no anticipated economic

costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or joe.stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §130.0012, which provides the Coordinating Board with authority for the selected public colleges to offer baccalaureate degrees in Texas.

The amendments affect the Texas Education Code, §130.0012.

§5.41. Purpose.

The purpose of this subchapter is to describe the criteria and approval processes for degree and certificate programs and for administrative changes involving academic units. Criteria in §5.45 of this title (relating to Criteria for New Baccalaureate and Master's Degree Programs) apply to selected public colleges.

§5.42. Authority.

Texas Education Code, §61.051(e) provides that no new department, school, degree program, or certificate program may be added at any public institution of higher education except with specific prior approval of the Board. Texas Education Code, §61.055 requires a written certification of adequate financing be made before the Board approves any new department, school, or degree or certificate program. Texas Education Code, §130.0012 applies to selected public colleges.

§5.43. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (8) (No change.)

(9) Selected Public Colleges--Those public colleges authorized to offer baccalaureate degrees in Texas.

(10) [~~(9)~~] Upper-division certificate program--A certificate program at a university or health-related institution that consists primarily of upper-division undergraduate courses.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703744
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2007
For further information, please call: (512) 427-6114

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SUBCHAPTER E. TEXAS GOVERNOR'S SCHOOLS

19 TAC §§5.91 - 5.96

The Texas Higher Education Coordinating Board proposes new §§5.91 - 5.96 concerning Texas Governor's Schools. Specifically, these new sections will set forth requirements for implementation of summer residential Texas Governor's Schools for high achieving high school students.

Dr. Glenda O. Barron, Associate Commissioner for Participation and Success, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Barron has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering these sections will be that high-achieving high school students will have opportunities to supplement their high school courses with curricular activities that will stimulate and deepen their intellectual curiosity in math, science, humanities, fine arts, and/or leadership and public policy. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Glenda O. Barron, Associate Commissioner of Participation and Success, at P.O. Box 12788, Austin, Texas 78711, or Glenda.Barron@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under Texas Education Code, §61.07621, which provides the Coordinating Board with the authority to adopt rules to administer Texas Governor's Schools.

The new sections affect Texas Education Code, §61.07621.

§5.91. Purpose.

The purpose of this subchapter is to set forth requirements for implementation of summer residential Texas Governor's Schools for high achieving high school students.

§5.92. Authority.

Texas Education Code, §61.07621 authorizes the Coordinating Board to adopt rules to administer Texas Governor's Schools.

§5.93. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Board or Coordinating Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education.

(3) Regional Education Service Centers--The public education centers whose duties are set forth in Texas Education Code, §§8.001 - 8.007.

(4) Eligible Institution--A Texas public senior college or university as defined in Texas Education Code, §61.003.

(5) Eligible Student--High-achieving high school students who are residents of Texas and can demonstrate intellectual curiosity about and a commitment to a rigorous and challenging academic program in the area(s) of a program offered by an eligible institution selected as a Texas Governor's School.

(6) Rising 11th or 12th Grade Students--Students who in a given academic year will complete the 10th or 11th grade and be promoted to the 11th or 12th grade, respectively, in the following academic year.

§5.94. Institutional and Student Eligibility.

(a) An eligible institution or institutions shall be selected to be a Texas Governor's School under procedures outlined by the Commissioner and set forth in a Request for Proposals or other competitive process soliciting proposals for Texas Governor's Schools.

(b) An approved Texas Governor's School must offer a summer residential program to eligible students that, at a minimum,

(1) has a duration of at least three weeks;

(2) includes an educational curricula in the area(s) of

(A) mathematics and science;

(B) humanities;

(C) fine arts; and/or

(D) leadership and public policy.

(c) Eligible students shall be selected based upon criteria outlined by the Commissioner and in accordance with Texas Education Code, §61.07621. Selected students shall reflect the same percentage of rising 11th and/or rising 12th grade students as are attending public high schools in each of the 20 regional education service centers.

§5.95. Award of Credit.

(a) An approved Texas Governor's School may offer college credit courses as part of its program according to guidelines established by the Commissioner and set forth in a Request for Proposals or other competitive process soliciting proposals for Texas Governor's Schools.

(b) An approved Texas Governor's School may not award high school credit.

(c) The home high school of a participating student in an approved Texas Governor's School may award high school credit to a student who successfully completes a Texas Governor's School course only through compliance with §74.26(a)(2) of this title (relating to Award of Credit).

§5.96. Funding.

(a) The amount and use of funding awarded to each approved Texas Governor's School shall be determined by the Commissioner.

(b) The funds shall be distributed to each approved Texas Governor's School in a manner and time to be prescribed by the Commissioner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 15, 2007.

TRD-200703644
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2007
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER CC. EARLY HIGH SCHOOL GRADUATION SCHOLARSHIP PROGRAM

19 TAC §21.953, §21.956

The Texas Higher Education Coordinating Board proposes amendments to §21.953 and §21.956 concerning the Early High School Graduation Scholarship Program. Specifically, the amendment to §21.953(b) reflects the effective date of House Bill 2383 of the 80th Texas Legislature, which is the date new program provisions went into effect. New §21.953(e) describes the process by which the Coordinating Board will measure enrollment periods for determining student eligibility for awards. Amendments to §21.956 also reflect the effective date of House Bill 2383 of the 80th Texas Legislature, which is the date new program provisions went into effect.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has estimated that for the first year of the first five years the amendments are in effect, the fiscal impact will be approximately $1.5 million; the impact will drop to approximately $500,000 in the second year and become insignificant thereafter for the state. The funding will come from the Foundation Program and does not represent additional costs to the state.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the receipt of $1,000 awards by certain Texas public high school students who graduated between September 1, 2005 and June 15, 2007. To qualify, they must have graduated in no more than 45 months, having completed at least the Recommended High School Program with 30 or more hours of college credit. Without this rule change, they are unable to receive awards because their date of graduation (i.e., date they receive their diplomas) is a few days beyond the statutory limit of 45 months. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §56.209, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, Chapter 56, Subchapter K, relating to the Early High School Graduation Scholarship Program.

The amendments affect Texas Education Code, §§56.201 - 56.210.

§21.953. Eligible Students.

(a) (No change.)

(b) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school on or after September 1, 2005 but prior to June 15, 2007, [~~September 1, 2007,~~] must:

(1) - (4) (No change.)

(c) To receive an award through the Early High School Graduation Scholarship Program, a student who graduated from high school on or after June 15, 2007, [~~September 1, 2007,~~] must:

(1) - (4) (No change.)

(d) (No change.)

(e) The months to graduation will be measured beginning with the student's first full month in ninth grade through the date the high school certifies as the date the student completes all the requirements for graduation.

§21.956. Award Amounts and Processing Cycle.

(a) (No change.)

(b) For students who graduate on or after September 1, 2005:

(1) the aggregate amount of state credit that may be awarded to a student through this program is:

(A) $2,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and graduated from high school in 36 consecutive months or less and an additional $1,000 if the person graduated with at least 15 hours of college credit; or

(B) $500 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and graduated from high school in more than 36 consecutive months but not more than 41 consecutive months and an additional $1,000 if the person graduated with at least 30 hours of college credit; or

(C) $1,000 to apply toward tuition and mandatory fees if the student completed the Recommended or Distinguished Achievement Program-Advanced High School Program and, either:

(i) graduated prior to June 15, 2007, [~~September 1, 2007,~~] from high school in more than 41 consecutive months but not more than 45 consecutive months with at least 30 hours of college credit, or

(ii) graduated on or after June 15, 2007, [~~September 1, 2007,~~] from high school in more than 41 consecutive months but not more than 46 consecutive months with at least 30 hours of college credit.

(2) - (3) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703669
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 25, 2007
For further information, please call: (512) 427-6114

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SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

19 TAC §21.2101

The Texas Higher Education Coordinating Board proposes amendments to §21.2101 concerning the Exemption Program for Veterans and their Dependents (The Hazlewood Act). Specifically, amendments to §21.2101(b) reflect changes to the Hazlewood Act as a result of the passage of Senate Bill 1640 by the 80th Texas Legislature, which entitles veterans and eligible children to receive both federal and state veterans education benefits in the same term if the value of the federal benefits do not exceed the value of the state benefit (tuition and fees other than property deposit and student service fees). Amendments to §21.2101(e) clarify the manner in which "attempted hours" are to be calculated for hours dropped after the first class day and prior to the census date.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has estimated that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be that veterans or their children will better understand their options in using the Hazlewood exemption. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §54.203, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.203.

The amendments affect Texas Education Code, §54.203.

§21.2101. Hazlewood Act Exemption.

(a) (No change.)

(b) If the eligible veteran or child is entitled to federal veterans' education benefits during the term or semester for which he or she applies for the Hazlewood Act Exemption, he or she is entitled to receive both federal and state veterans benefits during the same time only if the value of the federal veteran's benefits is less than the value of the student's tuition and fees, less property deposit and student service fees. [~~an institution shall first apply the federal veterans' education benefits to the payment of the applicable tuition and fees. If the sum of the semester's federal benefits is less than the amount of applicable tuition and fees, the value of the exemption may not exceed the portion of tuition and fees that is not covered by federal benefits.~~]

(c) - (d) (No change.)

(e) If the Hazlewood Act Exemption is used to pay for only a portion of the hours taken during a given term or semester, an institution shall deduct the number of hours taken in the semester or term from the 150 hours of eligibility in a manner that is proportionate to the share of the applicable tuition and fees that were subject to the exemption. For hours dropped prior to the census date, the hours attributed to the Hazlewood Act shall be proportionate to the share of tuition and fee charges paid for through the Hazlewood exemption during that term.

(f) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703670
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING THE JOB CORPS DIPLOMA PROGRAM

19 TAC §97.2001

The Texas Education Agency (TEA) proposes an amendment to §97.2001, concerning the Job Corps diploma program. The section implements the requirements of the Texas Education Code (TEC), §18.006, added by Senate Bill 1395, 79th Texas Legislature, 2005, that requires the commissioner to develop and implement a system of accountability to rate the annual performance of the Job Corps diploma program. The section also adopts the most recently published Job Corps diploma program accountability procedures manual. The proposed amendment would adopt the *Job Corps Diploma Program Accountability Manual*, dated August 2007, and incorporate other applicable updates to the rule.

Effective December 10, 2006, the commissioner adopted 19 TAC §97.2001, exercising rulemaking authority over developing and implementing a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the TEC, §39.072. Section 97.2001 includes the *Job Corps Diploma Program Accountability Manual*, dated September 2006, in rule as a figure. The intention is to annually update 19 TAC §97.2001 to refer to the most recently published *Job Corps Diploma Program Accountability Procedures Manual*.

The proposed amendment to 19 TAC §97.2001 would update the rule to adopt the new *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2007, as a figure. The proposed amendment to adopt the new manual would prescribe the specific procedures, standards, and performance indicators by which Job Corps diploma programs will be evaluated and rated in 2008.

Revisions in the new manual include: (1) updates to year references to make the document current; (2) a change to the due date for data submission to the first Monday in December rather than specifying an exact date; (3) the addition of a new leaver code to address the need to account for students who enroll in distance education programs; (4) adjustment to the Economically Disadvantaged student group definition to be consistent with definitions used for public school accountability and applicability to the Job Corps diploma program; (5) removal of procedures regarding first-year, on-site visits since it is inapplicable to second-year programs; and (6) other applicable updates and clarifications.

The proposed amendment to 19 TAC §97.2001 would also update rule text, as follows. Subsection (a) would be modified to refer to the diploma program. Subsection (c)(3) would be revised to broaden reference to applicable assessments required for graduation. Subsection (d) would be updated to reference the *2007 Job Corps Diploma Program Accountability Procedures Manual*, dated August 2007, and ratings issued in 2008. Subsection (d) would also be updated to establish that the manual adopted for each prior year would remain in effect for the respective school year.

The proposed amendment to 19 TAC §97.2001 would modify reporting requirements to address the characteristics of the students served by the Job Corps diploma program. Alternative collection methods were considered; however, based on the number and frequency of data submissions to the TEA, it was determined that electronic submission via the TEA Secure Environment (TEASE) would incur higher costs to the TEA than simple paper submission. The proposed amendment would not require additional paperwork beyond that already maintained.

Adrain Johnson, associate commissioner for school district services, has determined that for each year of the first five years the amendment is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment.

Dr. Johnson has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of the procedure manual and current procedures, standards, and performance indicators by which the diploma programs are evaluated and rated. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

The public comment period on the proposal begins August 31, 2007, and ends September 30, 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §18.006, which requires the commissioner to develop and implement a system of accountability consistent with the Texas Education Code, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the Texas Education Code, §39.072.

The new section implements the Texas Education Code, §18.006.

§97.2001. Job Corps Diploma Program Accountability Procedures.

(a) Intent and purpose. The Job Corps diploma program develops and implements educational programs specifically designed for persons eligible for enrollment in a Job Corps training program established by the U.S. Department of Labor. The Job Corps diploma [~~training~~] program was established in order for eligible students to satisfy the requirements necessary to receive a high school diploma.

(b) Student eligibility. A person is eligible to participate in the Job Corps diploma program if the person is enrolled in an established Job Corps training program and has not satisfied the state requirements to receive a high school diploma. Any person enrolled in good standing in the Job Corps diploma program is eligible for programs or services under the Texas Education Code (TEC), Chapter 18. A person's eligibility for programs and services under the TEC, Chapter 18, does not make a person ineligible for an education program or service under any other chapter of the TEC.

(c) Program requirements. The TEC, §1.001, applies to a Job Corps diploma program operated by or under contract with the U.S. Department of Labor.

(1) The Job Corps diploma program shall provide a course of instruction that includes the required curriculum under the TEC, §28.002, §74.1 of this title (relating to Essential Knowledge and Skills), and §74.3 of this title (relating to Description of a Required Secondary Curriculum).

(2) The Job Corps diploma program shall offer, annually, at least all the courses required for an eligible student to graduate under the applicable minimum high school program described in Chapter 74 of this title (relating to Curriculum Requirements).

(3) A student enrolled in the Job Corps diploma program must satisfy the [~~secondary exit- level~~] assessments required for graduation under the TEC, §39.025, before receiving a high school diploma.

(d) Accountability procedures. Job Corps [~~corps~~] diploma program evaluations and ratings issued in 2008 [~~2007~~] are based upon specific procedures, standards, and performance indicators, which are described in the *Job Corps Diploma Program Accountability Procedures Manual*, dated August 2007, [~~September 2006,~~] provided in this subsection. The specific procedures, standards, and performance indicators used in the *Job Corps Diploma Program Accountability Procedures Manual* adopted for use prior to 2008 remain in effect for all purposes, including accountability, data standards, and audits, with respect to the applicable school year.
Figure: 19 TAC §97.2001(d)
[~~Figure: 19 TAC §97.2001(d)~~]

(e) Annual review. The Texas Education Agency (TEA) shall conduct an annual review to evaluate Job Corps diploma program performance based on indicators provided in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section. The diploma program shall comply with all applicable requirements of state laws and rules.

(f) Performance indicators. Annually, the commissioner of education shall review and determine the student performance indicators appropriate to the characteristics of the students served by the Job Corps diploma program. The performance of the Job Corps diploma program shall be evaluated on the basis of the specific indicators as determined by the commissioner of education.

(1) The annual evaluation shall be based on, at a minimum, the following performance indicators:

(A) student performance on assessment instruments required under the TEC, §39.023;

(B) dropout rate for the grade levels served; and

(C) diploma program completion rate.

(2) To the extent appropriate, the annual performance review shall incorporate other indicators from the Academic Excellence Indicator System (AEIS) under the TEC, Chapter 39.

(g) Accountability ratings and criteria. The procedures for determining the Job Corps diploma program accountability ratings are established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(1) The Job Corps diploma program performance on selected AEIS indicators shall be used by the TEA in determining the annual performance rating of the Job Corps diploma program.

(2) A performance rating assigned to the Job Corps diploma program may be appealed to the commissioner of education in accordance with the procedures established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(3) The commissioner of education may lower the Job Corps diploma program accountability rating based on the findings of an on-site investigation conducted under the TEC, §39.074.

(4) If a Job Corps diploma program is below any standard under the TEC, §39.073(b), the program is considered a low-performing program. If the Job Corps diploma program is low performing for a period of two consecutive years or more, the commissioner of education may close the program.

(h) Reporting of data. The Job Corps diploma program shall report to the TEA accountability data on a submission schedule determined by the TEA. Performance data shall be disaggregated with respect to student attributes as determined by the commissioner of education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 475-1497

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

The State Board for Educator Certification (SBEC) proposes the repeal of §§249.1 and 249.45 - 249.56 and amendments to §§249.3 - 249.7, 249.9 - 249.15, 249.17 - 249.33, and 249.35 - 249.44, concerning disciplinary proceedings, sanctions, and contested cases, including the enforcement of the educator's code of ethics. The proposed amendments and repeals result from the SBEC's rule review conducted in accordance with Texas Government Code, §2001.039.

The SBEC rules in 19 TAC Chapter 249 are organized as follows: Subchapter A, General Provisions; Subchapter B, Enforcement Actions and Guidelines; Subchapter C, Prehearing Matters; Subchapter D, Hearing Procedures, Subchapter E, Posthearing Matters; and Subchapter F, Enforcement of the

Educator's Code of Ethics. These subchapters provide for rules that establish guidelines and procedures for conducting investigations and disciplinary actions relating to educator misconduct.

TEC, §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders. The SBEC proposes the following changes to 19 TAC Chapter 249 to improve and enhance the disciplinary investigation process and to align with statute.

Process Improvements

The proposed changes to Chapter 249 would streamline processes to make them more uniform and to reflect rules of practice before the State Office of Administrative Hearings (SOAH).

The proposed changes would make the process to initiate a contested case more uniform. The current rules provide for contested case hearings in several instances (see §§249.11, 249.12, 249.13, and 249.15). Each type of contested case has different filing requirements. The proposed changes would establish a uniform procedure where the party who bears the burden of proof would be required to file a petition that conforms to the requirements in the SBEC rules and the SOAH rules. The responding party would be required to file an answer that also conforms to the requirements in the SBEC rules and the SOAH rules. By requiring a petition and an answer in each type of contested case, the contested case process would be more efficient, because the petition and the answer would help focus the hearing on the issues that are contested.

The proposed changes would allow the petition and the answer to be filed before the case is referred to the SOAH. The current rules require the contested case to be filed with the SOAH before both the petition and answer have been filed. This requirement has led to many cases being filed at the SOAH that are subsequently dismissed because a party fails to make a required filing. The current rules also require an administrative law judge to issue a proposal for decision before the SBEC can take certain actions, even when the other party has defaulted. The proposed changes would allow the SBEC to take action directly in any default.

The process for canceling an erroneously issued certificate in §249.13 would be revised to reflect the use of the virtual certificate rather than a paper certificate. The current rules require a contested case hearing before the SBEC can cancel a certificate that is issued in error if the person does not return it. The proposed changes would allow the SBEC to cancel the certificate and treat the person who received the certificate as though the underlying application were administratively denied. That person would be able to appeal the administrative denial of their application.

The decision-making guidelines in §249.17 would be revised to simplify the analysis for assessing the appropriate penalty. The new guidelines would rely on six factors, rather than the 14 factors in the current rule. The proposed changes would focus more on the nature of the offense, and the changes would take into account the SBEC's obligation to deter future violations. The current rules list several factors that are redundant; require the SBEC to predict future behavior based on subjective evidence; require the SBEC to consider irrelevant factors, such as the person's ability to make restitution; and fail to identify key factors, such as whether the sanction will deter future misconduct. The proposed changes would also identify certain very serious offenses for which the appropriate penalty is the permanent revocation of the educator's certificate. These changes are shown in §249.17(d).

Elimination of Modification Process

The proposed changes would eliminate the open-ended process to modify sanctions contained in §249.45, which would make most SBEC actions final upon entry of an order. The current rules provide an open-ended process by which an educator can seek to modify any sanction that has previously been issued. The proposed repeal of §249.45 is necessary since §249.45 relies on many irrelevant factors, such as whether the certificate holder has paid child support or has received an offer of employment. Section 249.43 would still provide a procedure for reinstating a suspended certificate. Section 249.44 would also provide a procedure for reapplication following the revocation, cancellation, or denial of a certificate but would allow the SBEC to permanently revoke, deny, or accept a permanent surrender of a certificate. Also, the proposed changes in §249.44 would allow for a reapplication every five years, rather than every year.

Clarification of Notice Procedure

The proposed changes would clarify the manner in which the Texas Education Agency (TEA) staff would notify a person of an action taken under Chapter 249. Pursuant to the proposed changes in §249.30(c), the TEA staff would send the notice to the address that is supplied to the TEA pursuant to the certification rules and any other address that is known to the TEA. This would clarify existing policy that the TEA staff send notice to any address that the TEA staff is aware of, but that the TEA staff is not obligated to search for the person.

Dispositions Prior to Hearing

In instances where a petition and answer have been filed, but one of the parties fails to appear, the proposed changes in §249.35 would provide a procedure where the administrative law judge would abate the proceedings and defer to the SBEC for a disposition. Pursuant to §249.35(c), the SBEC would have the ability to grant a default order. The administrative law judge would dismiss the case from the docket when it receives notice that the SBEC has disposed of the case.

The rules allow the SBEC to dispose of cases before a hearing for a variety of reasons, including the unnecessary duplication of proceedings. The proposed changes would add §249.35(d) to allow the SBEC to dispose of a case if the matter has previously been determined in a hearing held pursuant to the TEC, Chapter 21, Subchapter G.

Exceptions to a Proposal for Decision

The proposed changes would add §249.37(d) to identify the reasons that a party may file exceptions to a proposal for decision.

Final Decisions and Orders

The proposed changes would modify §249.39(d) to clarify that the SBEC may adopt an order that modifies the findings of fact or conclusions of law contained in a proposal for decision as authorized by the Administrative Procedure Act. The proposed changes to §249.39(d) would also allow the SBEC to remand the matter back to the administrative law judge with instructions to make an essential finding of fact or to apply the correct burden of proof.

Appeals from Final Orders

The proposed changes would add §249.40(c) to identify the standard of review for appeals from a final order, which is the sub-

stantial evidence standard of review. The proposed changes would also add §249.40(d), which would make the party who appeals the decision responsible for the cost of transcribing the testimony and preparing the record.

Virtual Certificate

The proposed changes would add a definition of the term "virtual certificate" in §249.3(46), which would make the virtual certificate the official certification record. Throughout Chapter 249, modifications would also be made to reflect the use of the virtual certificate as the official certification record.

Quorum

The definition for the term "quorum" in §249.3(32) would mean a majority of all members of the SBEC (including non-voting members), consistent with the definition in the SBEC's operating policies and procedures and applicable law.

Administrative Denials

Two additional grounds relating to administrative denial would be added in §249.12. The proposed changes would provide for TEA staff to deny an application if it is fraudulent (§249.12(b)(3)) or if the applicant committed a crime relating to the duties of the teaching profession while the applicant's certificate was suspended (§249.12(b)(6)).

Disciplinary Actions

The list of actions that are grounds for disciplinary action against a certificate holder would be expanded in §249.15(b)(7) to include grounds for action listed in §249.14(g) and §249.12(b).

Cancellation of Scores from a Certification Examination

The proposed changes to §249.11(a) would allow the TEA staff to cancel an examinee's test scores and bar a person from retaking the test. The examinee would still be allowed to appeal as provided in the rule.

Mailbox Rule

Throughout Chapter 249, a rebuttable presumption would be created that mail is received five days after it has been mailed (see §§249.11(b), 249.26(c), and 249.27(a)).

Elimination of Unnecessary Provisions

Section 249.1, Board's Regulatory Authority, and several definitions in §249.3, Definitions, would be repealed as unnecessary.

Technical Changes

Throughout Chapter 249, numerous grammatical and technical changes would be made, such as the term "Agency" would be replaced with the term "TEA staff" and the term "Board" would be replaced with the term "State Board for Educator Certification." Also, statutory citation references would be updated and standardized to reflect current law and *Texas Register* formatting requirements. Sections would also be restructured for consistency and readability.

Changes to Comply with Senate Bill 9, 80th Texas Legislature, 2007

As a result of passage of SB 9, changes are recommended to §249.14. Language in subsection (h) would be amended to require an immediate notice be placed on an educator's certification record if the alleged conduct presents a risk to a student or minor. Also, subsection (i) would be amended to provide procedures for this immediate notice.

Additional Proposed Changes

The proposed amendments to 19 TAC Chapter 249 were presented for discussion at the May 2007 SBEC meeting. During the May meeting, the SBEC requested that staff conduct a stakeholder meeting to gather input from interested parties. A stakeholder meeting was held June 5, 2007. The agenda for the meeting included an overview of the draft amendments, and substantial agreement was reached. The following changes are the result of the meeting.

Language would be added to §249.15(a)(3) to clarify that a probated suspension for a set term may be issued by the SBEC. In §249.15(c) - (e), language would be modified to clarify that the filing of a petition and answer will take place before the case is filed before the SOAH; and if the certificate holder fails to file timely an answer, TEA staff may request that the SBEC enter a default order.

Language in §249.17(d) would be modified to: add specificity to the grounds for permanent revocation or denial; add a cross-reference for the term "solicitation of a romantic relationship," which is already defined in §249.14(m); use the term "criminal homicide" for consistency with the Texas Penal Code; and replace the term "drugs" with the more specific term, "controlled substance defined in the Texas Health and Safety Code, Chapter 481."

Language would be added in §249.18(c) to allow TEA staff to file a case with the SOAH at any time. This modification would allow staff to file its case without first exchanging pleadings with the certificate holder.

Language would be modified in §249.24 to further clarify that the date of filing is based on a rebuttable presumption set out in subsection (b). Also, new subsection (c) would be added to allow the parties to exchange documents electronically if both parties agree.

Language would be amended in §249.27(a) to clarify that a written answer shall be filed with the petitioner and in §249.27(e) to state that a dismissal based upon an answers' failure to comply with the requirements of §249.27 would need to be supported by a proposal for decision issued by an administrative law judge.

Language in §249.35 would be amended in subsection (c) to allow the SOAH in addition to the SBEC to dispose of a case; in subsection (d) to provide that findings of fact and testimony considered at an employment hearing held under the TEC, Chapter 21, are admissible in the administrative hearing, but not conclusive; and in subsection (e)(3) to add specificity that either party may be the certificate holder or applicant and that failure to appear for hearing would require the SOAH to abate the case so that the SBEC may enter a final order. Also, language would be modified in subsection (f) to clarify that, when the TEA staff requests the issuance of a default judgment from the SBEC, TEA staff would notify the affected educator that the SBEC will be considering the issuance of the default judgment. The certificate holder would have the ability to appear at that meeting to explain why the certificate holder defaulted, and the SBEC would have the ability to issue a default or to direct TEA staff to hold a contested case hearing.

Language in §249.37(d)(5) would be added to state that exceptions to a proposal for decision may be based on finding of fact that is not supported by substantial evidence.

Language in §249.43(a) would be amended to allow the person to apply for a duplicate certificate up to 30 days prior to the end of the suspension period.

Language in §249.44(a) would be added to state that, when a person whose certificate was previously surrendered or revoked reapplies, that person must comply with the current certification requirements, including having a recommendation from an approved program.

Sections 249.46 - 249.56 are proposed for repeal. The disciplinary rules currently allow for the prosecution of alleged violations of the educator's code of ethics. The stakeholders suggested that the procedural rules for the enforcement of the educator's code of ethics found in Chapter 249, Subchapter F, be eliminated and that TEA staff should be allowed to prosecute alleged violations of the educator's code of ethics through its disciplinary rules. The stakeholders agreed that the procedural rules for the educator's code of ethics have proved to be cumbersome and inefficient by requiring formal responses, dispositions, and appeals for each and every complaint filed and created unnecessary expenses for the educators and the school districts. The stakeholders agreed that the previous modifications to the procedural rules would allow a more efficient resolution by TEA staff, but noted that these reforms still required formal responses from educators for each and every complaint.

Dr. Raymond Glynn, associate commissioner for educator quality and standards, has determined that, for each year of the first five years the proposed amendments and repeals are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and repeals. The proposed amendments and repeals to 19 TAC Chapter 249 will make the processing of contested cases more efficient. The proposed revisions will allow the TEA staff to process default cases without filing the cases at the SOAH, which will reduce the amount of SOAH billings. However, this cost savings will be offset by the ability of TEA staff to file additional contested cases at the SOAH as TEA staff work to reduce the backlog of contested cases.

Dr. Glynn has determined that, for each year of the first five years the proposed amendments and repeals are in effect, the public benefit anticipated as a result of enforcing the amendments and repeals will be streamlined procedures for prosecuting disciplinary cases, allowing for a quicker resolution of contested disciplinary cases. A quicker resolution of contested disciplinary cases would help ensure more accurate and reliable testimony of witnesses if the hearing is scheduled closer in time to the alleged act of misconduct. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and repeals.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *sbecrules@tea.state.tx.us* or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments and repeals submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if

the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed repeal implements the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.1. Board's Regulatory Authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703708

Raymond Glynn

Associated Commissioner, Educator Quality and Standards

State Board for Educator Certification

Earliest possible date of adoption: September 30, 2007

For further information, please call: (512) 475-1497

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19 TAC §§249.3 - 249.7, 249.9, 249.10

The amendments are proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.3. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

~~[(1) Act--the Texas Education Code, as amended.]~~

(1) [~~(2)~~] Administrative denial--a decision or action by the Texas Education Agency (TEA) staff [~~agency~~] to deny a person any of the following based on the withholding or voiding of certification test scores; the invalidation of a certification test registration; or evidence of a lack of good moral character or improper conduct:

(A) admission to an educator preparation program;

(B) certification (including certification following revocation, cancellation, or surrender of a previously issued certificate) or renewal of certification; or

(C) reinstatement of a previously suspended certificate.[~~; or~~]

~~[(D) removal or modification of a sanction other than revocation, cancellation, or surrender.]~~

(2) [~~(3)~~] Administrative law judge (ALJ)-- [~~ALJ--administrative law judge;~~] a person appointed by the chief judge of the State

Office of Administrative Hearings (SOAH) [~~office~~] under Texas Government Code, Chapter 2003 [~~of the Government Code~~] .

[~~(4) Agency--the board acting through its executive director, staff, or agents, as distinguished from the board acting through its voting members in a decision making capacity. The term includes the executive director and his or her designee.~~]

[~~(5) Agency headquarters--the main offices of the board's executive director and staff located at 1001 Trinity, Austin, Texas, 78701-2603.~~]

(3) [~~(6)~~] Answer--the initial responsive pleading filed in reply to factual and legal issues raised by a petition.

[~~(7) APA--the Administrative Procedure Act, Chapter 2001, Government Code.~~]

(4) [~~(8)~~] Applicant--a party seeking any of the following from the TEA staff [~~agency~~] or the State Board for Educator Certification (SBEC): [~~board: admission to an educator preparation program;~~] issuance of a certificate (including issuance of a new certificate following revocation, cancellation, or surrender of a previously issued certificate); renewal of a certificate; or reinstatement of a suspended certificate[~~; or removal or modification of a sanction other than revocation, cancellation, or surrender. In a particular circumstance, an applicant may also be an educator or an examinee~~].

[~~(9) Board --the State Board for Educator Certification acting through its voting members in a decision making capacity.~~]

[~~(10) Board headquarters--the main offices of the board's executive director and staff located at 1001 Trinity Street, Austin, Texas, 78701-2603.~~]

[~~(11) Board member(s)--one or more of the members of the board, appointed and qualified under the Act, §21.033.~~]

(5) [~~(12)~~] Cancellation [~~or canceled~~]--[~~the withholding or voiding of test scores; the invalidation of a test registration; the invalidation of a surrendered certificate in lieu of revocation;~~] the invalidation of an erroneously issued certificate.

(6) [~~(13)~~] Certificate--the whole or part of any certificate, permit, approval, endorsement, or similar form of permission issued by the TEA staff [~~executive director~~] or the SBEC [~~board~~] . The official certificate is the record of the certificate as maintained on the SBEC's website.

(7) [~~(14)~~] Certificate holder [~~or holder of a certificate~~] --a person who holds a certificate issued under the Texas Education Code (TEC), Chapter 21, Subchapter B[~~, Chapter 21, of the Act~~].

[~~(15) Certificate requirement--any requirement, obligation, condition, or prerequisite prescribed by law, the board, or the executive director for the issuance of a certificate, including items such as required examinations, course transcripts, recommendations, information, or other documentation related to certification.~~]

(8) [~~(16)~~] Chair--the presiding officer of the SBEC [~~board~~] , elected pursuant to the TEC, §21.036 , [~~of the Act~~] or other person designated by the chair to act in his or her absence or inability to serve.

(9) [~~(17)~~] Chief judge--the chief administrative law judge of the SOAH [~~office~~].

(10) [~~(18)~~] Code of Ethics--the Code of Ethics and Standards of Practices for Texas Educators, pursuant to Chapter 247 of this title (relating to the Educators' Code of Ethics) [~~(19 Texas Administrative Code, Chapter 247 (relating to Educator's Code of Ethics))~~].

(11) [~~(19)~~] Complaint--a written statement submitted to the TEA staff [~~agency~~] that contains essential facts alleging improper conduct by an educator, applicant, or examinee, and provides grounds for sanctions.

(12) [~~(20)~~] Contested case--a proceeding under this chapter in which the legal rights, duties, and privileges of a party are to be determined by the SBEC [~~board~~] after an opportunity for an adjudicative hearing.

(13) [~~(21)~~] Conviction--an adjudication of guilt for a criminal offense. The term does not include the imposition of deferred adjudication for which the judge has not proceeded to an adjudication of guilt, except as provided by Code of Criminal Procedure, Article 42.12[~~, Code of Criminal Procedure~~].

[~~(22) Day--a calendar day, unless otherwise specified in this chapter.~~]

(14) [~~(23)~~] Disciplinary proceedings--contested case proceedings before the TEA staff [~~agency~~], the SOAH [~~office~~], and the SBEC [~~board~~] that commence when a request for hearing is timely filed under this chapter.

(15) [~~(24)~~] Educator--a person who is required to hold a certificate issued under the TEC, Chapter 21, Subchapter B[~~, Chapter 21, of the Act~~].

(16) [~~(25)~~] Effective date--as applied to a non-rulemaking decision or action by the SBEC or the TEA staff, the date the decision or action becomes final under the appropriate legal authority.

[~~(A) as applied to this chapter upon the board's adoption, 20 days after the date on which it is filed in the office of the secretary of state, pursuant to the APA;~~]

[~~(B) as applied to a non-rulemaking decision or action by the board or staff, the date the decision or action becomes final under the appropriate legal authority.~~]

(17) [~~(26)~~] Examinee--a person who registers to take or who takes a basic skills examination prescribed by the SBEC [~~board~~] for admission to an educator preparation program or a comprehensive examination prescribed by the SBEC [~~board~~] for a certificate.

[~~(27) Executive director--the executive director employed by the board pursuant to §21.039 of the Act and other agency employees acting on behalf of the executive director.~~]

(18) [~~(28)~~] Filing--any written petition, answer, motion, response, other written instrument, or item appropriately filed with the TEA staff [~~agency~~], the SBEC [~~board~~], or the SOAH [~~office~~] under this chapter.

(19) [~~(29)~~] Good moral character--the virtues of a person as evidenced, at a minimum, by his or her not having committed crimes relating directly to the duties and responsibilities of the education profession as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes) or acts involving moral turpitude.

[~~(30) Hearings coordinator--the staff person designated by the executive director to receive petitions and serve as the primary agency contact with the office.~~]

(20) [~~(31)~~] Informal conference--an informal meeting between the TEA [~~agency~~] staff and an educator, applicant, or examinee; the purpose of such a meeting being to give the person an opportunity to show compliance with all requirements of law for the granting or retention of a certificate or test score.

(21) [~~(32)~~] Invalidation [~~Invalidated or invalidation~~]--rendered void; lacking legal or administrative efficacy.

(22) [~~(33)~~] Law--the United States and Texas Constitutions, state and federal statutes, regulations, rules, relevant case law, and decisions and orders of the SBEC [~~board~~] and the commissioner of education.

(23) [~~(34)~~] Mail [~~or mailed~~] --certified United States mail, return receipt requested, unless otherwise provided by this chapter.

(24) [~~(35)~~] Majority [~~of the voting members present~~]--a majority of the voting members of the SBEC [~~board~~] who are present and voting on the issue at the time the vote is recorded.

(25) [~~(36)~~] Moral turpitude--improper conduct including, but not limited to, the following: dishonesty; fraud; deceit; theft; misrepresentation; deliberate violence; base, vile, or depraved acts that are intended to arouse or to gratify the sexual desire of the actor; drug or alcohol related offenses as described in §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes); or acts constituting abuse or neglect under the Texas Family Code, §261.001 [~~of the Texas Family Code~~].

~~[(37) Office--the State Office of Administrative Hearings.]~~

(26) [~~(38)~~] Party--each person named or admitted to participate in a contested case under this chapter.

(27) [~~(39)~~] Person--any individual, representative, corporation, or other entity, including the following: an educator, applicant, or examinee; the TEA staff [~~agency~~], SBEC [~~board~~], or SOAH [~~office~~]; any other agency or instrumentality of federal, state, or local government; or any public or non-profit corporation.

(28) [~~(40)~~] Petition--the written pleading filed by the petitioner in a contested case under this chapter.

(29) [~~(41)~~] Petitioner--the party having the burden of proof by a preponderance of the evidence in any contested case hearing or proceeding under this chapter. The term includes the following persons:

(A) the TEA staff [~~agency~~];

(B) a person appealing the administrative cancellation of scores based on irregularities involving a TEA- [~~an agency~~]administered test; and

(C) a person appealing the administrative denial of any of the following:

~~*[(i)* admission to an educator preparation program;]~~

(i) [~~(ii)~~] certification (including certification following revocation, cancellation, or surrender of a previously issued certificate) or renewal of certification; or

(ii) [~~(iii)~~] reinstatement of a suspended certificate.[~~; or~~]

~~*[(iv)* removal or modification of a sanction other than revocation, cancellation, or surrender.]~~

(30) [~~(42)~~] Presiding officer--the chair or acting chair of the SBEC [~~board~~].

(31) [~~(43)~~] Proposal for decision--a recommended decision issued by an ALJ [~~administrative law judge~~] in accordance with the Texas Government Code [~~APA~~] , §2001.062.

(32) [~~(44)~~] Quorum--a majority of the 14 [~~12 voting~~] members appointed to and serving on the SBEC [~~board~~] pursuant to the TEC, §21.033 [~~of the Act~~]; eight SBEC [~~seven voting board~~] members , as specified in the SBEC Operating Policies and Procedures.

(33) [~~(45)~~] Reinstatement--the reactivation to valid status of a certificate suspended by the SBEC [~~board~~]; the lifting or discharging of a suspension on a certificate.

(34) [~~(46)~~] Representative--a person representing an educator, applicant, or examinee in matters arising under this chapter; in a contested case proceeding before the SOAH [~~office~~], an attorney licensed to practice law in the State of Texas.

(35) [~~(47)~~] Reprimand--the SBEC's [~~board's~~] formal censuring of a certificate holder. [~~:~~]

(A) An [~~an~~] "inscribed reprimand" is a formal, published censure appearing on the face of the educator's virtual certificate. [~~official certification records;~~]

(B) A [~~a~~] "non-inscribed reprimand" is a formal, unpublished censure that does not appear on the face of the educator's virtual certificate [~~official certification record~~].

(36) [~~(48)~~] Revocation--a sanction imposed by the SBEC [~~board~~] permanently invalidating an educator's certificate.

(37) [~~(49)~~] Respondent--the party who contests factual or legal issues or both raised in a petition; the party filing an answer in response to a petition.

(38) [~~(50)~~] Sanction--

(A) a disciplinary action by the SBEC [~~board~~], including a restriction, reprimand, suspension, surrender, [~~cancellation,~~] or revocation of a certificate;

(B) a reasonable and lawful punitive measure imposed by the ALJ or presiding officer against a party, representative, or other participant involved in a disciplinary proceeding, hearing, or other matter under this chapter.

~~[(51) Staff--employees of the board as a state agency and hired by the executive director.]~~

(39) State Board for Educator Certification--the SBEC acting through its voting members in a decision-making capacity.

(40) State Board for Educator Certification member(s)--one or more of the members of the SBEC, appointed and qualified under the TEC, §21.033.

(41) [~~(52)~~] Surrender--an educator's voluntary, permanent relinquishment and invalidation of a particular certificate in lieu of disciplinary proceedings under this chapter and possible revocation of the certificate.

(42) [~~(53)~~] Suspension [~~or suspend(ed)~~]--a sanction imposed by the SBEC [~~board~~] temporarily invalidating a particular certificate until reinstated by the SBEC [~~board~~].

(43) [~~(54)~~] Test administration rules or [~~and~~] procedures--rules and procedures governing professional examinations administered by the SBEC [~~board~~] through the TEA staff and a test contractor, including policies, regulations, and procedures set out in a test registration bulletin.

(44) Texas Education Agency staff--staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(45) [~~(55)~~] Unworthy to instruct or to supervise the youth of this state--the determination that a person is unfit to hold a certificate under the TEC, Chapter 21, Subchapter B, [~~Chapter 21, of the Act~~] or

to be allowed on a school campus under the auspices of an educator preparation program.

(46) Virtual certificate--the official record of a person's certificate status as maintained on the SBEC's website.

§249.4. Applicability.

(a) In conjunction with the rules of practice and procedure of the State Office of Administrative Hearings (SOAH), [~~office~~] (1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~])) and other applicable law, this chapter shall govern disciplinary matters before the State Board for Educator Certification (SBEC) [~~board~~], including the following proceedings:

(1) sanctions sought against a certificate holder;

[~~(2) enforcement of the code of ethics;~~]

(2) [~~(3)~~] appeals of administrative denials;

(3) [~~(4)~~] appeals of the administrative cancellation or withholding of test scores for alleged violation of test administration rules;

(4) [~~(5)~~] reinstatement of a suspended certificate;

[~~(6) removal or modification of a sanction other than revocation, cancellation, or surrender;~~]

(5) [~~(7)~~] complaints of contract abandonment filed with the Texas Education Agency (TEA) staff [~~agency~~] pursuant to Texas Education Code (TEC), §§21.105(c), 21.160(c), or 21.210(c) [~~, of the Act~~]; and

(6) [~~(8)~~] sanctions sought against a certificate for the holder's knowing failure to report criminal history or other information required to be reported under the TEC, Chapter 22, Subchapter C[~~, Chapter 22, of the Act~~]; Texas Family Code, Chapter 261, Subchapter B[~~, Chapter 261, of the Texas Family Code~~]; or this chapter.

(b) The SOAH [~~office~~] shall conduct all contested case hearings held under this chapter.

(c) This chapter shall apply to any matter referred for a contested case hearing [~~to the office on or after the effective date of this chapter~~].

(d) This chapter does not apply to matters related to the proposal or adoption of the SBEC [~~board~~] rules under the Texas Government Code, Chapter 2001, [~~APA~~] or to internal personnel policies or practices of the TEA staff [~~executive director~~] or the SBEC [~~board~~] . The provisions of this chapter may not be used to seek sanctions against a member of the SBEC [~~board~~] or the TEA [~~agency's~~] staff acting in that capacity.

§249.5. Purpose [~~Purposes~~].

The purpose [~~purposes~~] of this chapter is [~~are as follows~~]:

(1) to protect the safety and welfare of Texas schoolchildren and school personnel;

(2) to ensure educators and applicants are morally fit and worthy to instruct or to supervise the youth of the state;

(3) to regulate and to enforce the standards of conduct of educators and applicants;

(4) to provide for disciplinary proceedings in conformity with the Texas Government Code, Chapter 2001, [~~APA~~] and the rules of practice and procedure of the State Office of Administrative Hearings [~~office~~];

(5) to enforce an educators' [~~educator's~~] code of ethics;

(6) to fairly and efficiently resolve disciplinary proceedings at the least expense possible to the parties and the state;

(7) to promote the development of legal precedents through State Board for Educator Certification (SBEC) [~~board~~] decisions to the end that disciplinary proceedings may be justly resolved; and

(8) to provide for regulation and general administration pursuant to the SBEC's [~~board's~~] enabling statutes.

§249.6. Construction.

(a) This chapter shall be liberally construed in conformity with the Texas Government Code, Chapter 2001, [~~APA~~] and the rules of practice and procedure of the State Office of Administrative Hearings [~~office~~] so as to achieve the purposes for which it was adopted, without changing the statutory jurisdiction, powers, or authority of the State Board for Educator Certification (SBEC) [~~board~~].

(b) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

(c) If any provision of this chapter is declared invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this chapter that can be applied without the invalid provision. To that end, the SBEC [~~board~~] declares the provisions of this chapter to be severable.

§249.7. Signature Authority; Seal.

(a) The State Board for Educator Certification (SBEC) [~~board~~] may delegate to the chair the authority to sign on behalf of a majority of the SBEC [~~board~~] members a decision made or order issued under this chapter.

(b) As provided by this chapter, the Texas Education Agency (TEA) staff [~~executive director~~] may sign final orders dismissing cases by agreement of the parties or by non-suit of the petitioner as well as those relating to other matters as provided by this chapter.

(c) The SBEC [~~board~~] and the TEA staff [~~executive director~~] may maintain a seal to authenticate their official acts under this title [~~chapter~~], including certifying copies of records showing decisions or orders of the SBEC [~~board~~] or the TEA staff [~~executive director~~]. The seal shall have a star with five points and the words "State Board for Educator Certification" on it.

§249.9. Ex Parte Communications.

Subjects, parties, their authorized representatives, or anyone else on a party's behalf shall not communicate or attempt to communicate with any State Board for Educator Certification [~~board~~] member regarding a complaint, investigation, or disciplinary proceeding under this chapter, except as allowed by law. The chair may impose sanctions against a violator of this section.

§249.10. Conduct and Decorum.

(a) Parties, authorized representatives, witnesses, and other persons involved in a proceeding, hearing, or other matter under this chapter shall conduct themselves with proper dignity, courtesy, and respect for the State Board for Educator Certification (SBEC), [~~board, executive director,~~] Texas Education Agency staff, administrative law judge (ALJ) [~~ALJ~~], and all other participants. Disorderly conduct shall not be tolerated. The rules of the State Office of Administrative Hearings (SOAH) [~~office~~] governing conduct and decorum under 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]) , shall also apply to matters referred to the SOAH [~~office~~].

(b) Authorized representatives shall observe the standards of conduct prescribed for their professions.

(c) The presiding officer or ALJ may impose sanctions against a violator of this section, including barring the person from attending further proceedings. Sanctions allowed by the rules of the SOAH [~~office~~] under 1 TAC, Part 7 [~~Texas Administrative Code~~], Chapter 155 , governing sanctions against a party or its representative and the grounds for them under that chapter are also available to the chair in any other proceeding before the SBEC [~~board~~] that is not conducted by the SOAH [~~office~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703709
Raymond Glynn
Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 475-1497

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SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §§249.11 - 249.15, 249.17

The amendments are proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.11. Test Irregularities; Appeal; Sanctions.

(a) Upon satisfactory evidence that the examinee has violated test administration rules or procedures, the State Board for Educator Certification may cancel the examinee's test scores or registration and bar the person from being admitted to a future test administration. The Texas Education Agency (TEA) staff shall mail notice of this action to the examinee, and the examinee shall be given the opportunity to show compliance with test administration rules or procedures.

[~~(a) The agency may administratively cancel the scores of an examinee because of test irregularities and shall mail written notice of such cancellation to the examinee, including the reasons for such action. The examinee shall be given the opportunity to show compliance with test administration rules or procedures.~~]

(b) The examinee may appeal the administrative cancellation of test scores by requesting a hearing before the State Office of Administrative Hearings (SOAH)[~~office~~]. The appeal of an administrative cancellation shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.29 (relating to Pleadings) [~~request for hearing before the office~~] and shall be filed with the TEA staff [~~agency~~]. No appeal of an administrative cancellation shall receive a contested case hearing on the merits unless the petition [~~request for hearing~~] is received by the TEA staff [~~agency~~] within 30 calendar days after the person received written notice of the TEA staff's [~~agency's~~] action. It is a rebuttable presumption that the notice was received no later than five calendar days after mailing. The TEA staff [~~If supported by an ALJ's~~

~~proposal for decision, the executive director~~] may dismiss an appeal not timely filed.

(c) The TEA staff shall send an answer to the petition to the examinee and shall refer the petition and answer to the SOAH for a contested case hearing.

~~[(c) The agency shall mail to the examinee written notice of the referral of the matter to the office for further proceedings. Not later than 30 calendar days after receiving such written notice of the referral, the examinee shall file a petition with the office that complies in content and form with the requirements of this chapter and 1 Texas Administrative Code, Chapter 155 (relating to Rules of Procedure). At the time of filing with the office, a copy of the petition shall be served on the agency as respondent through the executive director by United States certified mail, return receipt requested. If supported by an ALJ's proposal for decision, the board may dismiss an examinee's petition not timely filed or in compliance with the applicable requirements under this chapter or 1 Texas Administrative Code, Chapter 155.]~~

~~[(d) Upon satisfactory evidence that the examinee has violated test administration rules or procedures, the board may cancel the examinee's test scores or registration or bar the person from being admitted to a future test administration.]~~

§249.12. Administrative Denial; Appeal.

(a) This section applies to the denial of an application for certification (including certification following revocation, cancellation, or surrender of a previously issued certificate), the denial of an application for renewal of certification, or the reinstatement of a suspended certificate. This section does not apply to the denial of an application for a certificate that has been permanently revoked, denied, or surrendered.

~~[(a) This section applies to the following matters:]~~

~~[(1) admission to an educator preparation program;]~~

~~[(2) certification (including certification following revocation, cancellation, or surrender of a previously issued certificate) or renewal of certification;]~~

~~[(3) reinstatement of a suspended certificate; or]~~

~~[(4) removal or modification of a restriction placed on a certificate.]~~

(b) The Texas Education Agency (TEA) staff [~~agency~~] may administratively deny any of the matters set out in subsection (a) of this section[~~, and the board may make the final decision in the matter~~] based on [~~upon~~] satisfactory evidence that:

(1) the person has committed a crime, an offense, or conduct that would constitute a crime or offense [~~or an offense~~] relating directly to the duties and responsibilities of the education profession;

(2) the person lacks good moral character; [~~or~~]

(3) the person filed a fraudulent application;

(4) [~~(3)~~] the person is unworthy to instruct or to supervise the youth of this state;[~~.~~]

(5) the person failed to comply with an order issued by the State Board for Educator Certification or the TEA staff; or

(6) the person has committed a crime, an offense, or conduct that would constitute a crime or offense relating directly to the duties and responsibilities of the education profession while the person's certificate was suspended.

(c) The TEA staff [~~agency~~] shall mail to the person whose application or request has been administratively denied written notice of the denial and the factual and legal reasons for it. The person shall be given an opportunity to show compliance with legal requirements [~~for the relief sought~~]. A person may appeal an administrative denial.

(d) The appeal of an administrative denial shall be in the form of a petition that complies in content and form with §249.26 of this title (relating to Petition) and 1 Texas Administrative Code, Part 7, §155.29 (relating to Pleadings). [~~request for hearing before the office and shall be filed with the agency.~~] No appeal of an administrative denial shall receive a contested case hearing on the merits unless the request for hearing is received by the TEA staff [~~agency~~] within 30 calendar days after the person received written notice of the TEA staff's [~~agency's~~] action. The TEA staff may dismiss an appeal that is not timely filed without further action. [~~If supported by an ALJ's proposal for decision, the executive director may dismiss an appeal not timely filed.~~]

(e) The TEA staff shall send an answer to the petition to the person appealing an administrative denial and shall refer the petition and answer to the State Office of Administrative Hearings for a contested case hearing.

~~[(e) The agency shall mail to the person appealing an administrative denial written notice of the referral of the matter to the office for further proceedings. Not later than 30 calendar days after receiving such written notice of the referral, the person appealing an administrative denial shall file a petition with the office that complies in content and form with the requirements of this chapter and 1 Texas Administrative Code, Chapter 155 (relating to Rules of Procedure). At the time of filing with the office, a copy of the petition shall be served on the agency as respondent through the executive director by United States certified mail, return receipt requested. If supported by an ALJ's proposal for decision, the board may dismiss a petition not timely filed or in compliance with the applicable requirements under this chapter or 1 Texas Administrative Code, Chapter 155.]~~

§249.13. Cancellation of an Erroneously Issued Certificate.

(a) When satisfactory evidence indicates that a certificate was issued in error and the person issued the certificate has not fulfilled all certification requirements, the Texas Education Agency (TEA) staff [~~agency~~] shall cancel the certificate by updating the person's virtual certificate [~~demand the return of the certificate, which the executive director shall cancel upon receipt~~].

(b) The TEA staff [~~agency~~] shall notify the person and the person's employing school district, if any, that the person was issued a certificate in error, what actions the TEA staff have taken [~~agency may take~~] to cancel the erroneously issued certificate, and how the person can be issued a valid certificate.

~~[(c) If the person who was issued the erroneously issued certificate fails to return the certificate, the agency may request a contested case hearing before the office. After opportunity for hearing and the issuance of a proposal for decision by an ALJ, the board may cancel the erroneously issued certificate.]~~

(c) [~~(d)~~] The TEA staff [~~agency~~] will issue the person a valid certificate when it receives satisfactory evidence that all certification requirements have been fulfilled. The person whose erroneously issued certificate has been cancelled may request a contested case hearing before the State Office of Administrative Hearings. The person whose certificate has been cancelled shall be deemed to have had their original application for the erroneously issued certificate administratively denied.

§249.14. Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition.

(a) The Texas Education Agency (TEA) staff may obtain and investigate information concerning alleged improper conduct by an educator, applicant, examinee, or other person subject to this chapter that

would warrant the State Board for Educator Certification (SBEC) denying relief to or taking disciplinary action against the person or certificate.

(b) Complaints against an educator, applicant, or examinee must be filed in writing.

(c) The TEA staff may also obtain and act on other information providing grounds for investigation and possible action under this chapter.

(d) A person who serves as the superintendent of a school district or the director of an open- enrollment charter school, private school, regional education service center, or shared services arrangement shall promptly notify in writing the SBEC by filing a report with the TEA staff within seven calendar days of the date the person first obtains or has knowledge of information indicating any of the following circumstances:

(1) that an applicant for or a holder of a certificate has a reported criminal history;

(2) that a certificate holder was terminated from employment based on a determination that he or she committed any of the following acts:

(A) sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;

(B) possessed, transferred, sold, or distributed a controlled substance;

(C) illegally transferred, appropriated, or expended school property or funds;

(D) attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such certificate or permit or to receive additional compensation associated with a position;

(E) committed a crime, any part of such crime having occurred on school property or at a school-sponsored event; or

(F) solicited or engaged in sexual conduct or a romantic relationship with a student or minor; or

(3) that a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (2) of this subsection.

(A) Before accepting an employee's resignation that, under this paragraph, requires a person to notify the SBEC by filing a report with the TEA staff, the person shall inform the certificate holder in writing that such a report will be filed and sanctions against his or her certificate may result as a consequence.

(B) A person required to comply with paragraph (3) of this subsection shall notify the governing body of the employing school district before filing the report with the TEA staff.

(e) A report filed under subsection (d) of this section shall, at a minimum, summarize the factual circumstances requiring the report and identify the subject of the report by providing the following available information: name and any aliases; certificate number, if any, or social security number; and last known mailing address and home and daytime phone numbers. A person who is required to file a report under subsection (d) of this section but fails to do so timely is subject to sanctions under this chapter.

(f) The TEA staff shall not pursue sanctions against an educator who is alleged to have abandoned his or her contract in violation of the Texas Education Code (TEC), §§21.105(c), 21.160(c), or 21.210(c), unless the board of trustees of the employing school district:

(1) renders a finding that good cause did not exist under the TEC, §§21.105(c)(2), 21.160(c)(2), or 21.210(c)(2); and

(2) submits a written complaint to the TEA staff within 30 calendar days after the educator separates from employment.

(g) To efficiently administer and implement the SBEC's purpose under this chapter and the TEC, the TEA staff may set priorities for the investigation of complaints based on the severity and immediacy of the allegations and the likelihood of harm posed by the subject of the investigation. All cases accepted for investigation shall be assigned one of the following priorities:

(1) Priority 1: conduct that indicates a risk to the health, safety, or welfare of a student or minor, parent of a student, fellow employee, or professional colleague, including but not limited to the following:

(A) any conduct constituting a felony criminal offense;

(B) indecent exposure;

(C) public lewdness;

(D) child abuse and/or neglect;

(E) possession of a weapon on school property;

(F) drug offenses occurring on school property;

(G) sale to or making alcohol or other drugs available to a student or minor;

(H) sale, distribution, or display of harmful material to a student or minor;

(I) certificate fraud;

(J) serious testing violations;

(K) deadly conduct; and

(L) conduct that involves soliciting or engaging in sexual conduct or a romantic relationship with a student or minor.

(2) Priority 2: other conduct including but not limited to the following:

(A) any conduct constituting a misdemeanor criminal offense or testing violation which is not described as Priority 1 under paragraph (1) of this subsection;

(B) contract abandonment; and

(C) code of ethics violations.

(3) An investigative notice will not be placed on an educator's certification records on the basis of an allegation of Priority 2 conduct. The TEA staff may change a case's priority at any time based on information received.

(4) For purposes of this subsection, a serious testing violation is a failure to observe the requirements of test administration established by the commissioner of education in a manner that involves dishonesty or intent to affect the test score of a student or action that is calculated to effect the accountability rating of a school district or campus.

(h) After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a student or minor, as described in subsection (g)(1) of this section, the TEA staff shall immediately [~~may~~] place an investigative notice on the certificate

holder's certification records stating that the certificate holder is currently under investigation [~~for conduct described in subsection (g)(1) of this section~~]. The placement of such an investigative notice must follow the procedures set forth in subsection (i) (1) of this section. After accepting a case for investigation, if the alleged conduct indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (g)(1) of this section, the TEA staff may place an investigative notice on the certificate holder's certification records stating that the certificate holder is currently under investigation. The placement of an investigative notice must follow the procedures set forth in subsection (i)(2) of this section.

(i) The following procedures must be followed for placing an investigative notice on the educator's certification records.

(1) At the time of placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a student or minor, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) Within ten days of placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.431 of this title (relating to Procedures in General).

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten days why the notice should be removed from the educator's certification records.

(2) Prior to placing an investigative notice on an educator's certification records for alleged conduct that indicates a risk to the health, safety, or welfare of a parent of a student, fellow employee, or professional colleague, as described in subsection (g)(1) of this section, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.

(A) At least ten days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.431 of this title.

(B) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct, which forms the basis for the investigative notice, and shall provide the certificate holder the opportunity to show cause within ten days why the notice should not be placed on the educator's certification records.

(3) The TEA staff shall determine whether or not to remove or place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.

[~~(i) Prior to placing an investigative notice on an educator's certification records, the TEA staff shall serve the certificate holder with a letter informing the educator of the investigation and the basis of the complaint.~~]

[~~(1) At least ten days before placing an investigative notice on the educator's certification records, the letter notifying the certificate holder of the investigation shall be mailed to the address provided to the TEA staff pursuant to the requirements set forth in §230.431 of this title (relating to Procedures in General).~~]

[~~(2) The letter notifying the certificate holder of the investigation shall include a statement of the alleged conduct which forms the basis for the investigative notice and shall provide the certificate holder the opportunity to show cause within ten days why the notice should not be placed on the educator's certification records.~~]

[~~(3) The TEA staff shall determine whether or not to place an investigative notice on the educator's certification records, taking into account the educator's response, if any, to the letter notifying the certificate holder of the investigation.~~]

(j) An investigative notice is subject to the following time limits.

(1) An investigative notice may remain on the certification records of a certificate holder for a period not to exceed 240 calendar days.

(2) The TEA staff may toll this time limit if information is received indicating that there is a pending criminal matter related to the alleged act of misconduct that gives rise to the investigative notice. For purposes of this subsection, a criminal matter includes an arrest, an investigation, or a prosecution by a criminal law enforcement agency. Upon receiving notice that the criminal matter has been resolved the tolling period shall end. As part of its procedure, the TEA staff will attempt to make bimonthly (once every two months) contact with a law enforcement agency where a criminal investigation is pending to determine whether the criminal investigation has been closed or otherwise resolved.

(3) The TEA staff may toll this time limit if the matter is referred for a contested case hearing, or upon agreement of the parties.

(k) The TEA staff shall remove an investigative notice from the certification records in the following situations.

(1) When a case's final disposition occurs within the time limits established in subsection (j) of this section, an investigative notice shall be removed.

(2) If the time limits for an investigative notice have been exceeded; and

(A) the certificate holder has made a written demand to the TEA staff that the investigative notice be removed because the time limits have been exceeded; and

(B) the TEA staff has failed to refer the matter to the State Office of Administrative Hearings for a contested case hearing within 30 calendar days from the date of receipt of the written demand to remove the investigative notice.

(l) Only the TEA staff may file a petition seeking sanctions under §249.15 of this title (relating to Disciplinary Action by Board). Prior to filing a petition, the TEA staff shall mail to the certificate holder affected by written notice of the facts or conduct alleged to warrant the intended action and shall provide the certificate holder an opportunity to show compliance with all requirements of law.

(m) The following words and terms, when used in this section, shall have the following meanings.

(1) For purposes of this section, "TEA staff" means staff of the Texas Education Agency assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(2) For purposes of this section, solicitation of a romantic relationship means deliberate or repeated acts that can be reasonably interpreted as soliciting a relationship characterized by an ardent emotional attachment or pattern of exclusivity. Acts that constitute the solicitation of a romantic relationship include, but are not limited to:

(A) behavior, gestures, expressions, communications, or a pattern of communication with a student that are unrelated to the

educator's job duties and which may reasonably be interpreted as encouraging the student to form an ardent or exclusive emotional attachment to the educator, including statements of love, affection or attraction. When evaluating whether communications constitute the solicitation of a romantic relationship, the TEA staff may consider the following:

(i) the nature of the communications;

(ii) the timing of the communications;

(iii) the extent of the communications;

(iv) whether the communications were made openly or secretly;

(v) the extent that the educator attempts to conceal the communications;

(vi) if the educator claims to be counseling a student, the SBEC may consider whether the educator's job duties included counseling, whether the educator reported the subject of the counseling to the student's guardians or to the appropriate school personnel, or, in the case of alleged abuse or neglect, whether the educator reported the abuse or neglect to the appropriate law enforcement agencies; and

(vii) any other communications tending to show that the educator solicited a romantic relationship with the student;

(B) making inappropriate comments about a student's body;

(C) making sexually demeaning comments to a student;

(D) making comments about a student's potential sexual performance;

(E) requesting details of a student's sexual history;

(F) requesting a date;

(G) engaging in conversations regarding the sexual problems, preferences, or fantasies of either party;

(H) inappropriate hugging, kissing, or excessive touching;

(I) suggestions that a romantic relationship is desired after the student graduates, including post-graduation plans for dating or marriage; and

(J) any other acts tending to show that the educator solicited a romantic relationship with the student, including, but not limited to, providing the student with drugs or alcohol.

§249.15. Disciplinary Action by State Board for Educator Certification [~~Board~~].

(a) Pursuant to this chapter, the State Board for Educator Certification (SBEC) [~~board~~] may take any of the following actions:

[~~(1) require the withdrawal of a person from an educator preparation program;~~]

(1) [~~(2)~~] place restrictions on the issuance, renewal, or holding of a certificate, either indefinitely or for a set term;

(2) [~~(3)~~] issue an inscribed or non-inscribed reprimand;

(3) [~~(4)~~] suspend a certificate for a set term or issue a probated suspension for a set term; [~~or~~]

(4) [~~(5)~~] revoke or cancel, which includes accepting the surrender of, a certificate without opportunity for reapplication for a set term or permanently; or[~~.~~]

(5) impose any additional conditions or restrictions upon a certificate that the SBEC deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.

[~~(b) The board may impose any additional conditions or restrictions upon a certificate that the board deems necessary to facilitate the rehabilitation and professional development of the educator or to protect students, parents of students, school personnel, or school officials.~~]

(b) [~~(c)~~] The SBEC [~~board~~] may take any of the actions listed in subsection (a) of this section [~~order disciplinary action against a person or certificate over which the board has jurisdiction upon a determination~~] based on satisfactory evidence that:

(1) the person has conducted school or education activities in violation of law;

(2) the person is unworthy to instruct or to supervise the youth of this state;

(3) the person has violated a provision of the educators' [~~educator's~~] code of ethics;

(4) the person has failed to report or has hindered the reporting of child abuse or the known criminal history of an educator as required by law and §249.14 of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; [~~Agency's~~] Filing of Petition);

(5) the person has abandoned a contract in violation of the Texas Education Code, §§21.105(c), 21.160(c), or 21.210(c);[~~, of the Act; or~~]

(6) the person has failed to cooperate [~~as provided by law~~] with the Texas Education Agency (TEA) [~~agency~~] in an investigation; or [~~commenced under this chapter.~~]

(7) the person has committed an act described in §249.14(g) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition), §249.12(b) of this title (relating to Administrative Denial; Appeal), or §249.16(b) of this title (relating to Eligibility of Persons with Criminal Convictions for a Certificate under Articles 6252-13c and 6252-13d, Revised Civil Statutes).

(c) The TEA staff may commence a contested case to take any of the actions listed in subsection (a) of this section by serving a petition to the certificate holder in accordance with this chapter describing the SBEC's intent to issue a sanction and specifying the legal and factual reasons for the sanction. The certificate holder shall have 30 calendar days to file an answer as provided in §249.27 of this title (relating to Answer).

(d) Upon the failure of the certificate holder to file a written answer as required by this chapter, the TEA staff may file a request for the issuance of a default judgment from the SBEC imposing the proposed sanction in accordance with §249.35 of this title (relating to Disposition Prior to Hearing; Default).

(e) If the certificate holder files a timely answer as provided in this section, the case will be referred to the State Office of Administrative Hearings (SOAH) for hearing in accordance with the SOAH rules; the Texas Government Code, Chapter 2001; and this chapter.

(f) [~~(d)~~] The provisions of this section are not exclusive and do not preclude consideration of other grounds or measures available by law to the SBEC [~~board~~] or the TEA staff [~~agency~~], including student loan default or child support arrears. The SBEC [~~board~~] may request the Office of the Attorney General to pursue available civil, equitable,

or other legal remedies to enforce an order or decision of the SBEC [board] under this chapter.

§249.17. Decision-Making [Decision Making] Guidelines.

(a) Purpose. The purpose of these guidelines is to achieve the following objectives:

(1) to provide a framework of analysis for the Texas Education Agency (TEA) staff, the presiding administrative law judge (ALJ) [ALJ] , and the State Board for Educator Certification (SBEC) [board] in considering matters under this chapter;

(2) to promote consistency in the exercise of sound discretion by the TEA staff, the presiding ALJ, and the SBEC [board] in seeking, proposing, and making decisions under this chapter; and

(3) to provide guidance for the informal resolution of potentially contested matters.

(b) Construction and application. This section shall be construed and applied so as to preserve SBEC [board] members' discretion in making final decisions under this chapter. This section shall be further construed and applied so as to be consistent with the Texas Education Code (TEC) [Act], the rest of this chapter, and other applicable law, including SBEC [board] decisions and orders.

(c) Consideration. The following factors may be considered in seeking, proposing, or making a decision under this chapter:

(1) the seriousness of the violation;

(2) whether the misconduct was premeditated or intentional;

(3) attempted concealment of misconduct;

(4) prior misconduct;

(5) whether the sanction will deter future violations; and

[(1) the type and severity of actual physical or mental harm to a student or to school personnel;]

[(2) the severity of economic harm to a student, the parent(s) of a student, school personnel, a school official, school district, or the state, and the ability of the person causing the harm to make restitution;]

[(3) premeditated or intentional misconduct;]

[(4) misconduct;]

[(5) motive;]

[(6) attempted concealment of misconduct;]

[(7) prior misconduct of a similar or related nature;]

[(8) disciplinary or criminal history;]

[(9) violation of a board order;]

[(10) prior written reprimands, warnings, or admonishments from any governmental agency or official regarding misconduct or violation of laws pertaining to the educator;]

[(11) likelihood of present harm or potential for continuing harm to students, parents of students, school personnel, or school or certification officials;]

[(12) terms and status of probation, community supervision, community service, restitution, or other requirement or condition judicially imposed in connection with a criminal offense;]

[(13) the likelihood of future misconduct of a similar or related nature as shown by:]

[(A) lack of remorse;]

[(B) failure to implement remedial measures to correct or alleviate harm arising from the misconduct; or]

[(C) lack of rehabilitative motivation or potential; or]

(6) [(14)] any other relevant circumstances or facts.

(d) Permanent revocation or denial. Notwithstanding subsection (c) of this section, the SBEC shall permanently revoke the teaching certificate of any educator or permanently deny the application of any applicant if, after a contested case hearing, it is determined that the educator or applicant:

(1) engaged in or solicited any sexual contact or romantic relationship with a student or minor as defined in §249.14(m) of this title (relating to Complaint, Required Reporting, and Investigation; Investigative Notice; Filing of Petition);

(2) possessed or distributed child pornography;

(3) was registered as a sex offender;

(4) committed criminal homicide;

(5) possessed, transferred, sold, distributed, or conspired to possess, transfer, sell, or distribute any controlled substance defined in the Texas Health and Safety Code, Chapter 481, on school property; or

(6) committed any offense described in the TEC, §21.058.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703710
Raymond Glynn
Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 475-1497

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SUBCHAPTER C. PREHEARING MATTERS

19 TAC §§249.18 - 249.29

The amendments are proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Gov-

ernment Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.18. Jurisdiction.

(a) A contested case commences under this chapter when a request for hearing is timely filed with the Texas Education Agency (TEA) staff [~~agency's hearings coordinator~~] .

(b) The TEA staff shall refer the case to the State Office of Administrative Hearings (SOAH) if the TEA staff determines:

(1) in an administrative denial case, the applicant has timely filed a petition pursuant to §249.12(d) of this title (relating to Administrative Denial; Appeal); or

(2) the certificate holder has timely filed an answer pursuant to §249.15(d) of this title (relating to Disciplinary Action by State Board for Educator Certification).

(c) Nothing in this section precludes the TEA staff from referring the case to the SOAH prior to the receipt of a petition or answer.

(d) [~~(b)~~] Jurisdiction of the SOAH [~~office~~] is determined by the administrative law judge [~~ALJ~~] under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]) and this chapter after the TEA staff has referred the case to the SOAH.

§249.19. Powers and Duties of Administrative Law Judge [~~ALJ~~] .

The powers and duties of an administrative law judge [~~ALJ~~] are determined by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]).

§249.20. Recusal and Disqualification of Administrative Law Judge [~~ALJs~~] .

The recusal or disqualification of an administrative law judge [~~ALJ~~] shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]).

§249.21. Substitution of Administrative Law Judge [~~ALJs~~].

Substitution of an administrative law judge[~~ALJ~~] shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]).

§249.22. Classification of Parties; Current Addresses.

(a) Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

(b) The petitioner in a contested case proceeding under this chapter and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]) is the party in a contested case seeking relief from the decision maker and requesting an adjudicative hearing with the State Office of Administrative Hearings [~~office~~]. The petitioner shall have the burden of proof to show by a preponderance of the evidence entitlement to such relief.

(c) Parties shall keep the Texas Education Agency (TEA) staff [~~agency~~] apprised of their current addresses and shall notify the TEA staff [~~agency~~] of a change of address within five calendar days of the effective date of such change.

§249.23. Representation of Parties.

(a) Representatives of parties shall notify the State Office of Administrative Hearings (SOAH) [~~office~~] and other parties of the representation.

(b) At an informal conference offered pursuant to the Texas Government Code, Chapter 2001 [~~APA~~], a person may be represented by a person who is not an attorney.

(c) Parties in contested cases before the SOAH [~~office~~] may represent themselves or be represented by an attorney licensed to practice law in the State of Texas.

§249.24. Filing or Serving Documents on the Texas Education Agency Staff [~~Agency~~] or the Administrative Law Judge [~~ALJ~~].

(a) The following original papers shall be filed with the Texas Education Agency (TEA) staff:

(1) appeal of an administrative denial;

(2) appeal of the imposition of an administrative sanction and request for a contested case hearing under this chapter;

(3) exceptions and replies to the proposal for decision of the administrative law judge (ALJ); and

(4) motions for rehearing.

[(a) The following requirements govern the filing or service on the agency of documents related to a proceeding under this chapter:]

[(1) The following original papers shall be filed with the agency: appeal of an administrative denial and request for a contested case hearing under this chapter; exceptions and replies to the ALJ's proposal for decision; and motions for rehearing. Such filings shall be directed to: Hearings Coordinator, State Board for Educator Certification, 1001 Trinity Street, Austin, Texas, 78701-2603. The date of filing shall be determined by the file stamp affixed by the agency.]

[(2) For any original paper required to be filed with the agency, the original and four copies shall be filed.]

(b) It is a rebuttable presumption that the date of filing is the file stamp date affixed by the TEA staff.

(c) All papers may be filed with the TEA staff by any method allowed by the State Office of Administrative Hearings (SOAH) rules or any electronic transmission agreed to by the parties.

(d) [(b)] The filing of papers with the SOAH [office] or service of documents on the ALJ in contested cases shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [Procedure]), unless modified by order of the ALJ as allowed by law.

§249.25. Pleadings.

(a) Pleadings [filed with the office] include petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

(1) Amended and supplemental pleadings may be filed at such time so as not to operate as a surprise on the opposing party.

(2) The administrative law judge [ALJ] may allow a pleading to be amended during the contested case evidentiary hearing on the merits and shall do so freely when the trial amendment will facilitate determining the merits of the case but will not unduly prejudice the objecting party.

(b) In addition to this chapter, 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [Procedure]) shall also govern the following matters related to pleadings: [the content generally of pleadings; purpose and effect of motions; general requirements for motions; responses to motions generally; motions to intervene; motions for continuance; responses to written motions for continuance; and amendment of pleadings.]

(1) content generally of pleadings;

(2) purpose and effect of motions;

(3) general requirements for motions;

(4) responses to motions generally;

(5) motions to intervene;

(6) motions for continuance;

(7) responses to written motions for continuance; and

(8) amendment of pleadings.

§249.26. Petition.

(a) The party seeking relief and requesting a contested case hearing under this chapter shall file a petition with the Texas Education Agency staff [office]. The petitioner shall have the burden of proof by a preponderance of the evidence in all contested case proceedings brought under this chapter.

(b) The petition shall contain the following items:

(1) a statement of the legal authority and jurisdiction under which the disciplinary action is being sought and the hearing is to be held;

(2) a reference to the particular sections of the statutes and rules involved;

(3) a statement of the matters asserted;

(4) a statement regarding the failure of the parties to reach an agreed settlement of the matters asserted in the petition;

(5) the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the petitioner and the petitioner's authorized representative; and

(6) if the petition imposes [seeks] sanctions against a certificate holder, a notification set forth as follows in capital letters and in at least 12[10]-point boldface type: IF YOU DO NOT FILE A WRITTEN ANSWER TO THIS PETITION WITH THE TEXAS EDUCATION AGENCY STAFF [STATE OFFICE OF ADMINISTRATIVE HEARINGS] WITHIN 30 CALENDAR DAYS OF BEING SERVED WITH THIS PETITION, [ANY SCHEDULED HEARING MAY BE CANCELED AND] THE STATE BOARD FOR EDUCATOR CERTIFICATION MAY GRANT THE RELIEF REQUESTED IN THIS PETITION, INCLUDING REVOCATION OF YOUR CERTIFICATE BY DEFAULT. THE MATTERS ASSERTED IN THE PETITION WILL BE DEEMED ADMITTED UNLESS YOUR WRITTEN ANSWER SPECIFICALLY DENIES EACH ASSERTION PLED AND IS FILED WITHIN THE PRESCRIBED TIME PERIOD. IF YOU FILE A WRITTEN ANSWER BUT THEN FAIL TO ATTEND A SCHEDULED HEARING, THE STATE BOARD FOR EDUCATOR CERTIFICATION MAY GRANT THE RELIEF REQUESTED IN THIS PETITION, INCLUDING REVOCATION OF YOUR CERTIFICATE.

(c) The petition shall be served on the respondent by United States certified mail, return receipt requested, and [. The agency as petitioner shall also serve the petition on the respondent] by regular first-class United States mail. A certificate evidencing service shall be included in the petition. For purposes of this section and §249.27 of this title (relating to Answer [answers]), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing.

[(d) A petition that does not comply with the requirements of this chapter and 1 Texas Administrative Code, Chapter 155 (relating to Rules of Procedure) is subject to dismissal.]

§249.27. Answer.

(a) The party responding to a petition filed under this chapter shall file a written answer with the petitioner [office] within 30 calendar days after being served with such petition. For purposes of this section and §249.26 of this title (relating to Petition [petitions]), it is a rebuttable presumption that a petition was served on the respondent no later than five calendar days after mailing. The [At the time of filing with the office, the] respondent shall serve [a copy of] the answer on the petitioner by United States certified mail, return receipt requested, and by regular first-class United States mail.

(b) The answer shall specifically admit or deny each allegation in the petition and shall plead all affirmative defenses.

(c) The answer shall contain the name, current mailing address, daytime telephone number, if any, and facsimile number, if any, of the respondent and the respondent's authorized representative.

(d) All well-pled factual allegations in the petition will be deemed admitted unless the respondent's answer, containing specific denials to each allegation, is filed within the time period prescribed in subsection (a) of this section. A general denial shall not be sufficient to controvert factual allegations contained in the petition.

(e) An answer that does not comply with the requirements of this section [~~chapter~~] and 1 Texas Administrative Code, Part 7, §155.29 [~~Chapter 155~~] (relating to Pleadings [~~Rules of Procedure~~]) may provide grounds for judgment in favor of the petitioner, if supported by a proposal for decision issued by an administrative law judge.

§249.28. Stipulations.

Stipulations shall be governed by 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]).

§249.29. Discovery.

The Texas Government Code, Chapter 2001; [~~APA,~~] 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures); [~~Procedure),~~] this chapter; [~~,~~] and the Texas Rules of Civil Procedure, as applicable, shall govern discovery.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703711
Raymond Glynn
Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 475-1497

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SUBCHAPTER D. HEARING PROCEDURES

19 TAC §§249.30 - 249.33, 249.35

The amendments are proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.30. Notice of [~~Contested Case~~] Hearing.

(a) The notice of [~~Notice of a contested case~~] hearing is governed by the Texas Government Code, Chapter 2001; [~~APA,~~] 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures); [~~Procedure),~~] and this chapter.

(b) The Texas Education Agency (TEA) staff [~~agency~~] may serve the notice of hearing by sending it certified, return receipt requested, and regular first-class United States mail to the party's last known address [~~as shown by the agency's records. An educator shall notify the agency of his or her current mailing address~~] .

(c) For purposes of this subsection, the last known address is the address supplied by the educator pursuant to §230.431(c) of this title (relating to Procedures in General) and any other address that is known to the TEA staff at the time that the notice is sent.

§249.31. Venue.

Hearings shall be conducted in Austin, Texas, at a site designated by the State Office of Administrative Hearings [~~office~~] in accordance with applicable law and 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]).

§249.32. Conduct and Record of Hearings.

The rules of the State Office of Administrative Hearings [~~office~~] under 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]) shall govern the procedure at the hearing and the making of a record of a contested case.

§249.33. Use of Deposition Transcripts in Contested Case Hearings.

The use of deposition transcripts in contested case hearings shall be governed by Rule 203 [~~207~~] of the Texas Rules of Civil Procedure. The terms "court proceedings" and "trial" used in Rule 203 [~~207~~] are deemed to refer to "contested case hearing(s)" for purposes of applying this section and Rule 203 [~~207~~] to contested case hearings before the State Office of Administrative Hearings [~~office~~] .

§249.35. Disposition Prior to Hearing; Default.

(a) This chapter and 1 Texas Administrative Code (TAC), Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]) shall govern disposition prior to hearing, default, and attendant relief.

(b) The Texas Education Agency (TEA) staff [~~executive director~~] may issue and sign orders on behalf of the State Board for Educator Certification (SBEC) [~~board~~] resolving a case by waiver, stipulation, compromise, agreed settlement, consent order, agreed statement of facts, or any other informal or alternative resolution agreed to by the parties and not precluded by law.

(c) The SBEC or the State Office of Administrative Hearings (SOAH) [~~If supported by an ALJ's proposal for decision, the board~~] may dispose of a case prior to a contested case hearing on the merits on the following grounds: unnecessary duplication of proceedings; res judicata; withdrawal; mootness; lack of jurisdiction; failure of a party requesting relief to timely file or file in proper form a pleading that would support an order or decision in that party's favor; failure to comply with an applicable order, deadline, rule, or other requirement issued by the SBEC [~~board~~], the TEA staff [~~executive director~~], or the presiding administrative law judge (ALJ) [~~ALJ~~]; failure to state a claim for which relief can be granted; or failure to prosecute.

(d) In any contested case hearing conducted pursuant to this chapter, the findings made by a hearing examiner in a proceeding arising under the Texas Education Code, Chapter 21, Subchapter G, shall not be conclusive but, the record of such proceeding, including all testimony and evidence admitted in the hearing, as well as the findings of the hearing examiner, shall be deemed admissible in a proceeding brought pursuant to this chapter, and shall be considered by the ALJ and the SBEC in issuing a proposed or final decision.

(e) [~~(d)~~] For purposes of this chapter, the following [~~an event described in paragraphs (1) or (2) of this subsection~~] shall constitute a default [~~on the part of a respondent~~] in a contested case:

(1) the failure of the respondent to timely file a written answer in proper form as required by this chapter; [~~or~~]

(2) the failure of the petitioner in an administrative denial case to timely file a petition in proper form as required by this chapter; or

(3) [~~(2)~~] the failure of the certificate holder or applicant [~~the respondent~~] to appear in person or by authorized representative on the day and at the time set for hearing in a contested case, regardless of whether a written answer or petition has been filed. In such event, the SOAH shall abate the case so that the SBEC may enter a final order in accordance with this chapter.

[~~(e) In the event a respondent defaults, the petitioner may seek from the ALJ or the board or both the appropriate relief as provided by paragraphs (1)-(3) of this subsection, in addition to and in conformance with any remedies for default available under 1 Texas Administrative Code, Chapter 155:~~]

[~~(1) Upon the failure to timely file a written answer in proper form as provided by §249.27 of this title (relating to answers) and 1 Texas Administrative Code, Chapter 155, the ALJ may propose entry of a default judgment against the respondent. The board may dispose of the case by entering a default judgment against the respondent and granting any relief requested in the petition, including the revocation of a certificate. Upon notice of the board's disposition, the ALJ shall dismiss the case from the office's docket.~~]

[~~(2) The petitioner, upon oral or written motion, shall be entitled to a continuance of a contested case hearing for a reasonable period of time determined by the ALJ if all the following conditions exist:~~]

[~~(A) the respondent has failed to timely file a written answer in proper form as provided by §249.27 of this title and 1 Texas Administrative Code, Chapter 155;~~]

[~~(B) the board has not disposed of the case; and~~]

[~~(C) both the petitioner and the respondent appear in person or by authorized representative on the date and time at a scheduled hearing before the office.~~]

[~~(3) Upon the failure to appear in person or by authorized representative on the date and time at a scheduled hearing before the office, regardless of whether a written answer has been filed, the ALJ may propose entry of a default judgment against the respondent pursuant to 1 Texas Administrative Code, §155.55 (relating to failure to attend hearing and default) or abate proceedings in the case and defer to the board for disposition. The board may dispose of the case by entering a default judgment and granting any relief requested in the petition, including the revocation of a certificate. Upon notice of the board's disposition, the ALJ shall dismiss the case from the office's docket.~~]

(f) Upon the occurrence of an event of default as defined in this section, the SBEC may enter a default judgment, as authorized by the Texas Government Code, §2001.056, and 1 TAC, Part 7, §155.55, whether or not the case has been referred to the SOAH, upon 30 days calendar notice. It is a rebuttable presumption that the notice was served on the certificate holder or applicant no later than five days after mailing. The notice shall specify the factual and legal basis for imposing the proposed sanction. Prior to issuance of a default decision or order, the certificate holder may contest the issuance of a default judgment by written notice filed with the TEA staff or by written request to appear before the SBEC at an SBEC meeting to show good cause for failure to file an answer or appear at the contested case proceeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703712
Raymond Glynn
Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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SUBCHAPTER E. POSTHEARING MATTERS

19 TAC §§249.36 - 249.44

The amendments are proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed amendments implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.36. Proposal for Decision.

(a) As appropriate, the presiding administrative law judge (ALJ) [~~ALJ~~] shall prepare a proposal for decision containing the following items:

(1) separately stated findings of fact and conclusions of law; and

(2) a proposed order, if requested in the Texas Education Agency (TEA) staff's notice of hearing.

(b) In an appeal of the imposition of an administrative sanction, the TEA staff may prepare a proposal for decision containing separately stated findings of fact, conclusions of law, and a proposed order if the respondent has failed to file a timely answer to the TEA staff's petition as required by §249.27 of this title (relating to Answer).

(c) [~~(b)~~] The ALJ may amend the proposal for decision pursuant to exceptions, replies to exceptions, and briefs.

(d) [~~(c)~~] The ALJ shall submit the proposal for decision to the SBEC [~~board's headquarters~~], with a copy to each party.

(e) [~~(d)~~] Except as otherwise provided or prohibited by these rules and other applicable law, the SBEC's [~~board's~~] general counsel may issue procedural directives relating to matters that arise after the submission of the proposal for decision to the SBEC [~~board~~] and that are not delegated to the State Office of Administrative Hearings [~~office~~] for action or decision.

§249.37. Exceptions and Replies.

(a) A party who is aggrieved by the proposal for decision of the administrative law judge (ALJ) or the Texas Education Agency (TEA) staff [~~ALJ's proposal for decision~~] shall file any exceptions to the proposal for decision within 30 calendar days of the date of the proposal for decision. Any replies to the exceptions shall be filed by other parties within 50 calendar days of the proposal for decision. Exceptions and replies shall be:

(1) filed with the State Board for Educator Certification (SBEC) [~~board~~] by mailing, hand-delivering, or faxing them to the SBEC's [~~agency's~~] general counsel [~~at agency headquarters~~];

(2) served upon the other party by mail, hand-delivery, or fax; and

(3) served on the ALJ in accordance with 1 Texas Administrative Code, Part 7, Chapter 155 (relating to Rules of Procedures [~~Procedure~~]).

(b) Any disagreement with a factual finding or conclusion of law in the proposal for decision not contained in an exception to the proposal shall be waived.

(c) Each exception or reply to a finding of fact or conclusion of law shall be concisely stated and shall summarize the evidence in support of each exception.

(1) Any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.

(2) In summarizing evidence, the parties shall include a specific citation to the hearing record where such evidence appears or shall attach the relevant excerpts from the hearing record.

(3) Arguments shall be logical and coherent and citations to authorities shall be complete.

(d) Exceptions to the proposal for decision may be based on the following:

(1) the ALJ has made an incorrect conclusion of law;

(2) the ALJ has failed to make an essential fact finding;

(3) the ALJ applied the incorrect burden or standard of proof;

(4) the findings of fact do not support the conclusions of law; or

(5) the ALJ has made a finding of fact that is not supported by substantial evidence.

§249.38. Review and Presentation of Proposal to Board.

The State Board for Educator Certification (SBEC) [~~board~~] shall review the proposal for decision and any amended proposals for decision, the exceptions and any replies to exceptions, the relevant excerpts from the record of the hearing conducted by the State Office of Administrative Hearings [~~office~~], and oral arguments by the parties (if any) before making a final decision or issuing an order in a case. The SBEC [~~board~~] may require the presiding administrative law judge [~~ALJ~~] to make a presentation on the proposal for decision at a public meeting of the SBEC [~~board~~].

§249.39. Final Decisions and Orders.

(a) The chair having certified a quorum present at a regularly scheduled State Board for Educator Certification (SBEC) [~~board~~] meeting, a majority vote of the voting members present shall be required to make a final decision on a proposal for decision or request for issuance of a default judgment, unless provided otherwise by this chapter.

(b) A copy of the SBEC's [~~board's~~] decision or order shall be delivered by hand or certified mail [~~mailed~~] to the parties or to their authorized representatives, as appropriate, and to the State Office of Administrative Hearings [~~office~~].

(c) All final decisions and orders of the SBEC [~~board~~] under this chapter shall be in writing and signed by the members of the SBEC [~~board~~] voting in favor of the decision or order or by the chair on behalf of the majority as allowed by this chapter. A final decision or order shall include findings of fact and conclusions of law separately stated. The findings of fact or conclusions of law may be adopted by reference to another document.

(d) The SBEC may adopt an order modifying findings of fact or conclusions of law in [~~board may change~~] a proposal for decision submitted by the administrative law judge (ALJ) [~~ALJ~~] in accordance with the Texas Government Code, Chapter 2001 [~~APA~~]. If the SBEC [~~board~~] adopts an order that differs from [~~changes~~] an ALJ's proposal for decision, the SBEC's [~~board's~~] final decision or order shall show how the proposal was changed and[~~,~~] state the specific reason and legal basis for a change[~~, and cite the portion of the hearing record supporting the change~~]. If the SBEC [~~board~~] changes a proposal for decision because no evidence in the record supports the ALJ's finding of fact or conclusion of law, then the SBEC [~~board~~] may cite the record as a whole for such a change. The SBEC may remand the matter back to the ALJ with specific instructions for the ALJ to determine an essential finding of fact or to apply the correct burden or standard of proof.

§249.40. Motion for Rehearing; Administrative Finality; Appeal.

(a) A motion for rehearing of the State Board for Educator Certification's (SBEC's) [~~board's~~] decision in a contested case and the determination of administrative finality shall be governed by the Texas Government Code, Chapter 2001; [~~APA,~~] applicable case law;[~~,~~] and this section.

(b) A motion for rehearing unsupported by satisfactory evidence shall be overruled. This subsection does not limit the overruling of a motion for rehearing on other grounds or by operation of law.

(c) Appeals from a final order of the SBEC shall be under the substantial evidence standard of review and governed by the Texas Government Code, Chapter 2001; applicable case law; and this section.

(d) The costs of transcribing the testimony and preparing the record for an appeal by judicial review shall be paid by the party who appeals.

§249.41. Procedure for Reprimand; Restriction.

(a) Notice. When the State Board for Educator Certification (SBEC) [~~board~~] reprimands an educator or restricts an educator's certificate, the Texas Education Agency (TEA) staff [~~agency~~] shall mail to the educator a copy of the SBEC's [~~board's~~] order.

(b) Inscribed reprimand.

(1) The TEA staff [~~agency~~] shall inscribe the reprimand upon the virtual certificate of the educator [~~demand that the educator return all certificates or permits issued by the State of Texas as well as all copies of them and substitute a certificate provided by the agency showing the reprimand on the face of the certificate~~].

(2) A record of the SBEC's [~~board's~~] action publicly reprimanding the educator shall become part of the educator's official certification records maintained by the TEA staff [~~agency~~].

(3) The TEA staff [~~agency~~] shall also notify the employing school district of the SBEC's [~~board's~~] order reprimanding the educator.

(c) Non-inscribed reprimand.

(1) The educator may retain all copies of all certificates or permits issued by the State of Texas as well as all copies of them without being required to substitute a certificate showing the reprimand.

(2) The SBEC's [~~board's~~] action reprimanding the certificate holder shall only become part of the person's confidential investigative/litigation case file maintained by the TEA staff [~~agency~~] and shall not be available for public inspection except as required by law.

(3) The TEA staff [~~agency~~], the presiding administrative law judge [~~ALJ~~], and the SBEC [~~board~~] may consider a non-inscribed reprimand in seeking, recommending, or ordering sanctions based on subsequently obtained evidence of improper or criminal conduct by the educator.

(d) Restriction.

[~~(1) The agency shall demand that the educator return all certificates or permits issued by the State of Texas as well as all copies of them and substitute a certificate provided by the agency showing each restriction.~~]

(1) [~~(2)~~] A record of the SBEC's [~~board's~~] action restricting the educator's certificate shall be placed on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff [~~agency~~].

(2) [~~(3)~~] The TEA staff [~~agency~~] shall notify the employing school district of the SBEC's [~~board's~~] order restricting the educator's certificate.

§249.42. Procedure for the Suspension, Surrender [~~Cancellation~~] , or Revocation of a Certificate.

(a) When the State Board for Educator Certification (SBEC) [~~board~~] issues an order of suspension, surrender [~~cancellation~~] , or revocation, the Texas Education Agency (TEA) staff [~~agency~~] shall mail a copy of the order to the person who formerly held the certificate.

(b) When an order of suspension, surrender [~~cancellation~~], or revocation becomes administratively final, the TEA staff [~~agency~~] shall mail to the former certificate holder notification of finality [~~and a demand that he or she return all certificates or permits issued by the State of Texas as well as all copies of them~~].

(c) A record of the SBEC [~~board~~] action suspending, canceling, or revoking the certificate shall be recorded on the educator's virtual certificate and shall become part of the person's official records maintained by the TEA staff [~~agency~~].

(d) The TEA staff [~~agency~~] shall also notify the employing school district of the SBEC's [~~board's~~] order when it becomes administratively final.

(e) The TEA staff [~~agency~~] shall notify all Texas school district superintendents and certification officers in each state or territory of the United States of the suspension, surrender [~~cancellation~~], or revocation by mailing a notice to any school district known to be employing the educator and by recording the action on the educator's virtual certificate.

§249.43. Procedure for Reinstating a Suspended Certificate.

(a) At the end of the suspension period designated by the State Board for Educator Certification (SBEC) [~~board~~], the person whose certificate was suspended may request that the Texas Education Agency (TEA) staff [~~executive director~~] reinstate the certificate by applying for a duplicate certificate up to 30 days prior to the end of the suspension period and paying the appropriate fee. The TEA staff shall run a criminal background check on the applicant for the duplicate certificate and may deny the reinstatement based on a subsequent criminal history or other misconduct occurring or discovered after the effective date of the order suspending the certificate.

(b) A record of reinstatement of the certificate shall become part of the educator's official certification records.

(c) The TEA staff [~~agency~~] shall notify all Texas school district superintendents and certification officers in each state or territory of the United States of the reinstatement of the certificate by updating the educator's virtual certificate to show that the period of the suspension has expired. The record of the prior suspension shall become part of the person's official records maintained by the TEA staff and shall be recorded as a prior disciplinary action on the educator's virtual certificate.

§249.44. Reapplication Following Denial, Surrender [~~Cancellation~~], or Revocation.

(a) Except as provided by this section, the Texas Education Agency (TEA) staff [~~agency~~] shall process and review in its usual and customary manner the certificate application of a person whose previous application was denied or whose certificate was revoked or surrendered [~~canceled or revoked~~] by the State Board for Educator Certification (SBEC) [~~board~~] under this chapter. Such an applicant shall be subject to the same requirements and qualifications as any other current applicant, as specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification), including recommendation from an approved educator preparation program, if applicable, and all other prerequisites for certification at the time the application is received. [~~For purposes of this section, the term "canceled" refers only to the surrender of a certificate in lieu of disciplinary action, including possible revocation.~~]

(b) A person whose certificate has been denied, surrendered [~~canceled~~], or revoked under this chapter shall not reapply for a certificate before the fifth [~~first~~] anniversary after the date of the SBEC's [~~board's~~] order denying, accepting a surrender [~~canceling~~], or revoking a certificate became administratively final. The TEA staff [~~executive director~~] shall reject without processing or further proceedings any application received in violation of this subsection.

(c) In addition to other sanctions available under this chapter, the SBEC [~~board~~] may order that a person whose certificate has been denied, surrendered [~~canceled~~], or revoked under this chapter shall not reapply for a certificate before a time period longer than five years [~~one year~~] after the order of denial, surrender [~~cancellation~~], or revocation became administratively final. The SBEC may order that a certificate be permanently revoked or surrendered or that an application be permanently denied. The TEA staff [~~executive director~~] shall reject without processing or further proceedings any application received in violation of such an order. A rejection pursuant to this section is not considered an administrative denial and is not subject to a contested case hearing.

(d) In reviewing a certificate application, the TEA staff [~~agency~~], the presiding administrative law judge [~~ALJ~~], and the SBEC shall [~~board may~~] consider prior SBEC [~~board~~] orders denying, accepting a surrender [~~canceling~~], or revoking a certificate previously applied for or held by the applicant. The applicant may not contest the underlying basis for the prior order.

[~~(e) After investigation and opportunity for hearing under this chapter, the board may grant or deny, in whole or in part, the relief requested in the applicant's petition.~~]

(e) [~~(f)~~]A person whose petition for relief under this section has been denied by the SBEC [~~board~~], in whole or in part, shall not file a subsequent application or petition earlier than the fifth [~~first~~] anniversary of the effective date of such denial.

[~~(g) The executive director shall reject without further proceedings any application or petition filed in violation of this section, any other applicable law, or related lawful contract or agreement.~~]

(f) [~~(h)~~] The TEA staff [~~agency~~] shall publish notice of any certificate issued to a person whose previous application was denied or whose certificate was canceled or revoked by the SBEC [~~board~~] under this chapter by updating the educator's virtual certificate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703713
Raymond Glynn
Associate Commissioner, Educator Quality and Standards
State Board for Educator Certification
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For further information, please call: (512) 475-1497

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19 TAC §249.45

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed repeal implements the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.45. Factors for Modifying Sanctions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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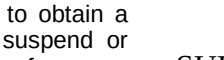

SUBCHAPTER F. ENFORCEMENT OF THE EDUCATOR'S CODE OF ETHICS

19 TAC §§249.46 - 249.56

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §21.006(g), which requires the State Board for Educator Certification (SBEC) to propose rules that require the reporting of misconduct; §21.031(a), which gives the SBEC the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.040(6), which allows the SBEC authority to develop and implement policies that define responsibilities of the SBEC; §21.040(8), which requires the SBEC to execute contracts for the performance of its administrative functions; §21.041(a), which allows the SBEC to adopt rules as necessary for its own procedures; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the SBEC to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Texas Government Code, Chapter 2001; §21.041(b)(8), which requires the SBEC to propose rules that provide for the enforcement of an educator's code of ethics; §21.044, which requires the SBEC to propose rules to establish requirements and qualifications to obtain a certificate; §21.060, which allows the SBEC to suspend or revoke educator certificates based on the eligibility of persons convicted of certain offenses; §21.105(c), which allows the SBEC to impose sanctions against a teacher employed under

a probationary contract; §21.160(c), which allows the SBEC to impose sanctions against a teacher employed under a continuing contract; §21.210(c), which allows the SBEC to impose sanctions against a teacher employed under a term contract; §22.082, which requires the SBEC to obtain criminal history records for an applicant for or holder of a teaching certificate; and §57.491(g), which requires the SBEC to not renew a certificate due to loan default on a guaranteed student loan; Texas Government Code, §411.090, which allows the SBEC to obtain criminal history record information from the Department of Public Safety of the State of Texas; §2001.058(f), which requires the SBEC to adopt rules and the application of general rules of practice for formal and informal proceedings brought pursuant to the Administrative Procedure Act, and §2051.001, which allows the SBEC to adopt a seal to attest an official document, certificate, or other written paper; Texas Family Code, §261.406(a), which requires the Texas Department of Family and Protective Services to investigate reports of possible abuse of a child in a public school, and §261.406(b), which requires the Department of Family and Protective Services to send a written report to the SBEC on investigations in schools for appropriate action; and Texas Occupations Code, §53.022, which requires the SBEC to determine whether a criminal conviction relates to an educator's ability to engage in the occupation; §53.023, which requires the SBEC to consider a set of factors to determine if the educator is fit to perform their duties; §53.024, which states that the licensing proceedings brought pursuant to chapter 53 are governed by the Administrative Procedure Act; §53.025, which requires the SBEC to issue guidelines to state the reasons a particular crime is considered to relate to educator certification and any other criterion that affects the decisions of the SBEC; §53.051, which requires the SBEC to notify a person in writing if the SBEC suspends or revokes a certificate or denies a person a license or the opportunity to be examined because of a prior conviction of a crime; and §53.052, which allows a person who has exhausted administrative remedies to file an action for judicial review within 30 days after the SBEC decision becomes final and appealable.

The proposed repeals implement the Texas Education Code, §§21.006(g); 21.031(a); 21.040(6) and (8); 21.041(a) and (b)(1), (4), (7), and (8); 21.044; 21.060; 21.105(c); 21.160(c); 21.210(c); 22.082; and 57.491(g); Texas Government Code, §§411.090, 2001.058(f), and 2051.001; Texas Family Code, §261.406(a) and (b); and Texas Occupations Code, §§53.022, 53.023, 53.024, 53.025, 53.051, and 53.052.

§249.46. Definitions.

§249.47. Purpose and Scope.

§249.48. Time for Filing of Complaint.

§249.49. Form of Complaint; Required Service; Local Resolution.

§249.50. Grounds for Dismissal of a Complaint by Texas Education Agency Staff or Review Committee.

§249.51. Texas Education Agency Staff Review and Notice.

§249.52. Appeal; Review Committee.

§249.53. Frivolous Complaints.

§249.54. Petition and Answer.

§249.55. Proceedings before the Office.

§249.56. Board Decision and Orders; Publication of Sanctions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Raymond Glynn
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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 155. RULES RELATING TO STANDARDS OF PRACTICE

22 TAC §155.1

The Texas Appraiser Licensing and Certification Board (board) proposes an amendment to §155.1, relating to the standards of practice. The proposed amendment is being made so that the jurisdictional exception currently in place for staff and board members, is expanded to include members of the peer review committee authorized by Texas Occupations Code, §1103.453.

Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, after consulting with Karen Alexander, director of staff services, has determined that, for the first five-year period the amended section as proposed is in effect, there will be fiscal implications for the state as a result of enforcing or administering the amended section. The cost to the state to administer this amended section is $7,950, each year. No fiscal implications are anticipated for local government. There is no anticipated impact on local or state employment as a result of implementing the amended section.

Mr. Beaulieu also has determined that, for each year of the first five years the proposed amendments are in effect, the anticipated public benefit as a result of this amendment is that peer review committees will be able to assist in expeditiously resolving cases that have been pending too long without having to worry about strictly complying with many of the technical requirements otherwise imposed by the Uniform Standards of Professional Appraisal Practice. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted to Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses and §1103.154, Rules Relating to Professional Conduct.

No other code, article, or statute is affected by this proposal.

§155.1. Standards of Practice.

(a) An appraisal or appraisal practice performed by a person subject to the Texas Appraiser Licensing and Certification Act must conform with the "Uniform Standards of Professional Appraisal Practice" (USPAP) of the Appraisal Foundation in effect at the time of the appraisal or appraisal practice.

(b) A Jurisdictional Exception is adopted for the members, [~~and~~] staff , and peer review committee members of the Texas Appraiser Licensing and Certification Board for all appraisal reviews relating to enforcement and disciplinary cases, applications, renewals, and experience verification audits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3959

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.7

The Texas Appraiser Licensing and Certification Board (board) proposes amendments to §157.7, relating to the denial of a license. These proposed amendments are being made so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under S.B. 914 which amended Texas Occupations, Code Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. Thus, the proposed amendments incorporate the legislatively mandated changes. These proposed amendments will also be adopted on an emergency basis simultaneously in this issue of the *Texas Register*.

Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, has determined that, for the first five-year period the amended sections as proposed are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Beaulieu also has determined that, for each year of the first five years the proposed amendments are in effect, the anticipated public benefit as a result of the amendment is that contested case hearings will now be heard by an administrative law judge with the State Office of Administrative Hearings instead of an in-house administrative law judge. This will provide additional assurance to the public that important factual determinations in contested case hearings are made by a totally independent, outside arbiter. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the amended section as proposed.

Comments on the proposed amendments may be submitted to Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses; §1103.154, Rules Relating to Professional Conduct; and §1103.508, Subchapter K., Contested Hearings.

No other code, article, or statute is affected by this proposal.

§157.7. Denial of a License.

If the board denies a certification or license to an applicant under the Act, the board immediately shall give written notice of the denial to the applicant. Notice and hearings relating to denial of a license issued by the board shall be governed by the Act and by Texas Government Code Annotated, §§2001.001, et seq. In the case of an application for approval as an appraiser trainee the board shall also notify a sponsoring certified appraiser of the denial, but a sponsoring appraiser is not required to request a hearing or to be named or admitted as a party in the proceeding before the board. A hearing pursuant to this section shall be held at a place designated by the the State Office of Administrative Hearings [~~board~~] and presided over by an [~~the agency's~~] administrative law judge from the State Office of Administrative Hearings who shall conduct the hearing and issue a proposal for decision[~~final decisions for the board~~]. Failure to request a hearing within 30 days of the written notice of denial waives judicial appeal, and the board determination becomes final and unappealable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3953

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SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.11

The Texas Appraiser Licensing and Certification Board (board) proposes amendments to §157.11, relating to contested cases. The proposed amendments are being made so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under S.B. 914 which amended Texas Occupations Code, Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. Thus, the proposed amendments incorporate the legislatively mandated changes. An additional proposed amendment to §157.11 replaces an outdated statutory reference with the correct statutory reference. Except for the amendments which make changes to outdated statutory language, all of the

proposed amendments will be adopted on an emergency basis simultaneously in this issue of the *Texas Register*.

Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, has determined that, for the first five-year period the amended sections as proposed are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Beaulieu also has determined that, for each year of the first five years the proposed amendments are in effect, the anticipated public benefit as a result of these amendment are that contested case hearings will now be heard by an administrative law judge with the State Office of Administrative Hearings instead of an in-house administrative law judge. This will provide additional assurance to the public that important factual determinations in contested case hearings are made by a totally independent, outside arbiter. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendments may be submitted to Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses;, §1103.154, Rules Relating to Professional Conduct; and §1103.508, Subchapter K. Contested Hearings.

No other code, article, or statute is affected by this proposal.

§157.11. Contested Cases; Entry of Appearance; Continuance.

(a) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance not later than 20 days after the date of receipt of notice as provided in Tex. Occ. Code §1103.506 [~~§12A of the Act~~].

(b) For the purposes of this section, a contested case shall mean any action that is referred by the board to the State Office of Administrative Hearings [~~agency's administrative law judge~~].

(c) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the State Office of Administrative Hearings[~~agency's administrative law judge~~].

(d) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing entitles the board to a continuance of the hearing in the contested case at the board's discretion for such a reasonable period of time as determined by the administrative law judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date the respondent has received notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703759

Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 465-3959

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SUBCHAPTER C. POST HEARING

22 TAC §§157.15 - 157.18

The Texas Appraiser Licensing and Certification Board proposes amendments to §157.15, §157.18 and new rules §157.16, Exceptions and Replies and §157.17, Final Decisions and Orders. The new rules and amendments are being made so that the board's rules relating to the contested case hearing process will conform to the recent legislative changes made in contested case hearing procedure and process under SB 914 which amended Texas Occupations Code Chapter 1103. The thrust of those legislative amendments was to require contested case hearings to be held before the State Office of Administrative Hearings instead of following the prior practice of utilizing an in-house administrative law judge. Thus, the new rules and amendments incorporate the legislatively mandated changes. The new rules and amendments have been adopted on an emergency basis and become effective on September 1, 2007 due to legislative changes made by SB 914. They appear simultaneously in this issue of the *Texas Register*.

Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, has determined that for each year of the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Beaulieu also has determined that for each year of the first-five year period the new rules and amendments are in effect, the anticipated public benefit as a result of this amendment is that contested case hearings will now be heard by an administrative law judge with the State Office of Administrative Hearings instead of an in house administrative law judge. This will provide additional assurance to the public that important factual determinations in contested case hearings is made by a totally independent, outside arbiter. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the section as proposed.

Comments on the proposed new rules and amendments may be submitted to Troy Beaulieu, attorney for the Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The new rules and amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses, §1103.154, Rules Relating to Professional Conduct and §1103.508, Subchapter K. Contested Hearings.

No other code, article, or statute is affected by this proposal.

§157.15. Decision.

(a) The administrative law judge shall serve on the parties a proposal for decision which shall contain:

(1) a statement of the administrative law judge's proposed reasons for the decision;

(2) findings of fact and conclusions of law, separately stated, that are necessary to the proposed decision.

(b) Service. When a decision is prepared, a copy of the decision shall be served by the administrative law judge on each party, the respondent's attorney of record or representative, and the board. Service of the decision shall be in accordance with §157.9(b) ~~Section 157.9(b)~~ of this title (relating to Notice of Hearing).

§157.16. Exceptions and Replies.

(a) Entitlement. Any party of record who is aggrieved by the administrative law judge's decision shall have the opportunity to file exceptions to the decision within 20 days from the date of service of the decision. Replies to the exceptions may be filed by the other party within 20 days of the filing of the exception.

(b) Exceptions and replies shall be filed by the administrative law judge.

§157.17. Final Decisions and Orders.

(a) Board Action. The proposal for decision may be acted upon by the board after the expiration of 60 days after the date of service of the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to the respondent's attorney of record.

(b) Imminent Peril. If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect on a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

§157.18. Motions for Rehearing; Finality of Decisions.

(a) Filing times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by certified mail, return receipt requested, of the final decision or order made by theboard [~~administrative law judge~~].

(b) - (d) (No Change)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703760
Troy Beaulieu
Attorney
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 465-3959

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC or commission) proposes amendments to §535.101 regarding Fees. This amended section as proposed establishes the fees necessary for the administration of the commission's functions. The proposed amendments would remove Texas Online fees from the TREC fee schedule, increase the salesperson application fee from $50 to $75, add a provision for late renewal fees, and increase the education evaluation fee from $20 to $30. The justification for the proposed amendments is to generate sufficient revenue to fund appropriations by the 80th Legislature (2007).

The 80th Legislature in the 2008-2009 General Appropriations Act and riders thereto concerning House Bill 716, House Bill 1530, and Senate Bill 914 approved budget appropriations for the commission contingent on those appropriations being paid through fee collections. The proposed amendments would permit TREC to raise the necessary revenue to offset the additional costs incurred by the commission to implement new programs required by laws passed by the 80th Legislature.

Karen Alexander, director of staff services, has determined that, for the first five-year period the amended section as proposed is in effect there will be fiscal implications for the state as a result of enforcing or administering the section. Annual revenues would increase by approximately $221,130 for FY 2008 and $265,380 for each year thereafter for the first five years after the section as amended is in effect. No fiscal implications are anticipated for local government. There is no anticipated impact on local or state employment as a result of implementing the amended section.

Ms. Alexander also has determined that, for each year of the first five years the amended section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be ensuring that the commission collects sufficient fees to fund appropriations by the legislature. The anticipated economic cost to persons who are required to comply with the amended section as proposed will be an increase of $25 for salesperson license applications, an increase of $10 in the fee for filing a request to evaluate education, a penalty of one and one half the renewal fee for renewal applications submitted 90 days or less from the expiration date of a license, and a penalty fee of two times the renewal fee for renewal applications submitted more than 90 days but less than one year from the expiration date of the license.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101, to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101, and ensure compliance with Chapter 1101.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code, or article is affected by the proposed amendments.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

(1) a fee not to exceed $75 [~~$80~~] for the filing of an original application for a real estate broker license;

(2) a fee of $30 [~~not to exceed $33.50~~] for annual renewal of a real estate broker license;

(3) a fee of $75 [~~not to exceed $52~~] for the filing of an original application for a real estate salesperson license;

(4) a fee of $30 [~~not to exceed $31.50~~] for annual renewal of a real estate salesperson license;

(5) a fee of $59 for taking a license examination;

(6) a fee of $20 for filing a request for a license for each additional office or place of business;

(7) a fee of $20 for filing a request for a license for a change of place of business change of name, return to active status or change of sponsoring broker;

(8) a fee of $20 for filing a request to replace a license lost or destroyed;

(9) a fee of $400 for filing an application for accreditation of an education program under Texas Occupations Code (the Act), §1101.301;

(10) a fee of $200 a year for operation of a real estate education program under the Act, §1101.301;

(11) a fee of $30 [~~$20~~] for transcript evaluation;

(12) a fee of $20 for preparing a license history;

(13) a fee of $25 for the filing of an application for a moral character determination; [~~and~~]

(14) a fee of $25 for the filing of an instructor application;[~~.~~]

(15) a fee of $45 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and

(16) a fee of $60 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than one year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703687
Loretta R. DeHay
General Counsel and Interim Administrator
Texas Real Estate Commission
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 465-3900

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES

SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.41

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.41, concerning the surveyor-in-training certification. It will implement recently passed legislation as a result of S.B. 1340.

The amendment will enact the requirement of The Professional Land Surveying Practices Act, §1071.253, Surveyor-in-training Certificate.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will adopt recently passed legislation.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.41. Applications.

(a) - (e) (No change.)

(f) The Texas certification as a surveyor-in-training is valid for eight [~~six~~] years from the date the surveyor-in-training certificate was issued by the original issuing state, territory or possession of the United States.

(g) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703648
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 239-5263

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22 TAC §661.42

The Texas Board of Professional Land Surveying (TBPLS) proposes an amendment to §661.42, concerning Fees. It will remove language regarding the cost of the application fee.

The amendment removes the cost of the application fee.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this amendment.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will remove language that is currently part of the application packet and is subject to change.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The amendment is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The proposed amendment implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.42. Fees.

(a) All fees are payable by cashier's check or money order and are not refundable.

~~[(b) Each application fee is $100.]~~

(b) [~~(c)~~] In addition to the application fee, an examination fee not to exceed the examination cost and fees for administering the exam is required.

(c) [~~(d)~~] New registrants will be required to pay a prorated part of the annual licensing fee according to their date of registration or licensure.

(d) [~~(e)~~] In compliance with the Open Records Act, the Texas Board of Professional Land Surveyors will recover the costs of providing copies of public information according to the following guidelines:

(1) For readily available information the following charges will be used:

(A) standard-size paper copy--$.10 per page;

(B) diskette--$1.00 each;

(C) personnel charge--$19 per hour;

(D) overhead charge--20% of personnel charge;

(E) computer resource charge--actual cost;

(F) programming time charge--actual cost;

(G) miscellaneous supplies--actual cost;

(H) postage and shipping charge--actual cost;

(I) fax charge:

(i) local--$.10 per page;

(ii) long distance (same area code)--$.50 per page;

(iii) long distance (different area code)--$1.00 per page; and

(J) other cost--actual cost.

(2) Information that is not readily available will be subject to the cost outlined in paragraph (1) of this subsection, plus any necessary document retrieval charges.

(3) A deposit may be required if the amount of estimated charges exceeds $100.

(4) Records can be furnished without charge or at reduced charge if it is determined that waiver or reduction is in the public interest.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703649
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 239-5263

22 TAC §661.51

The Texas Board of Professional Land Surveying (TBPLS) proposes a new section §661.51, concerning compliance with the surveyor-in-training certification. The new rule is to implement recently passed legislation as a result of S.B. 1340.

The new rule will enact the requirement of The Professional Land Surveying Practices Act, §1071.253, Surveyor-in-training Certificate and §1071.305, Continuing Professional Education.

Sandy Smith, Executive Director, has determined that for the first five year period the rule is in effect there will be no fiscal impact to state or local government as a result of enforcing or administering this new rule.

Ms. Smith has also determined that for each year of the first five years the rule is in effect the public will benefit from the rule because it will implement procedures that a surveyor-in-training must follow in order to renew his certification.

There will be no effect on small or micro businesses that are in compliance with the Board's Act and Rules. There are no anticipated costs to those who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted in writing to Sandy Smith, Executive Director, Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, Austin, TX 78753. Comments may also be faxed to Ms. Smith at the Board at (512) 239-5253 or may be sent electronically to ssmith@txls.state.tx.us. All requests for a public hearing on the

proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new rule is proposed pursuant to §1071.151, Title 6, Occupations Code, Subtitle C, which authorizes the Board to adopt and enforce reasonable and necessary rules to perform its duties.

The new rule implements the Texas Administrative Code, Title 22, Part 29, General Rules of Procedures and Practices.

§661.51. Surveyor-In-Training Education Requirement.

(a) As a condition for retaining a Surveyor-In-Training (SIT) certificate during the eight year period of working towards completion of registration, the certificate holder must complete professional education activities.

(b) Professional education activities include successful completion of courses in areas supporting development of skill and competence in professional land surveying; participating in programs, seminars, workshops or conferences which provide increased professional knowledge related to the practice of professional land surveying and other continuing education activities which are approved by the Board.

(c) At the end of the eight year period if the certificate holder has not successfully completed registration but wishes to maintain the SIT certification, the Board will require written proof of completion of at least 32 hours of acceptable continuing education during the eight year period as set out in subsection (b) of this section. The certificate can then be renewed on a yearly basis. As a condition for renewal of an SIT certificate, the board shall require a certificate holder to successfully complete eight hours of continuing professional education courses per year and compliance with Chapter 664 of this title, relating to Continuing Education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703647
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 239-5263

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§13.11, 13.13 - 13.19, 13.31 - 13.34 and 13.61; the repeal of §§13.12, 13.20, and 13.41 - 13.48; and new §13.41, concerning data collection, designation of sites serving medically underserved populations, limited liability certification, and medically underserved areas and resident pharmacists.

BACKGROUND AND PURPOSE

In accordance with the requirements of the Government Code, §2001.039, the sections have been reviewed under the four-year rule review required by state law and the department has determined that reasons for adopting the sections continue to exist in that rules on this subject are needed; however the sections need amending or repeal as described in this preamble.

Section 13.11 and §§13.13 - 13.19 are proposed for amendment in order to require hospitals to submit data under Health and Safety Code, §311.033 and §311.045(a), by an online electronic system rather than by a paper survey form. Section 13.12 and §13.20 are proposed for repeal.

Sections 13.31 - 13.34 are proposed for amendment because of minor changes in language since the sections were last approved.

Sections 13.41 - 13.48 are proposed for repeal and replaced by new §13.41 in order to reflect new hospital reporting deadlines as required by Senate Bill (SB) 1378, 79th Legislature.

Section 13.61 is proposed for amendment due to minor editorial changes in language since the section was last approved.

SECTION-BY-SECTION SUMMARY

Subchapter B (Data Collection), §13.11 and §§13.13 - 13.19, are proposed for amendment to change the method of reporting by hospitals from "either a paper or electronic survey form" to an online electronic method only and as selected by the department. The online system will include two hospital surveys required by statute to be reported to the department by Health and Safety Code, §311.033 and §311.045(a): the Annual Survey of Hospitals (ASH, an online survey hosted by the American Hospital Association (AHA)) and the Annual Statement of Community Benefits Standard (ASCBS) paper survey. Combining these two surveys into one survey form will reduce the department's workload because it will no longer be necessary for department staff to enter ASCBS hospital charity care data by hand into a database file.

The proposed amended rules will also streamline how the data are edited and verified and will allow the department to more easily meet statutory reporting deadlines to the Offices of the Comptroller and Attorney General. These proposed amendments have been discussed with the Texas Hospital Association, AHA, and several hospital staff. The stakeholders believe the online system will help hospitals by requiring them to provide financial, utilization, and charity care data to the department through one survey form rather than two survey systems. The proposed amendment also substitutes Department of State Health Services for the older name of the agency, Texas Department of Health.

These rules are based on Health and Safety Code, §311.033 and §311.045(a). Since the enactment of these rules, the department has obtained the technology to collect and receive survey data from hospitals and systems through an electronic (online) system. Section 311.033 is the annual survey of hospitals that is already available online. These rules will no longer allow filing of a hard copy. Section 311.045(a) is the ASCBS. These rules will require online filing of the ASCBS. Section 311.046(a)(5) requires a nonprofit hospital and hospital system to prepare an annual report of the community benefits plan that shall include spe-

cific information along with completed Worksheet 1-A that computes the ratio of cost to charge for the fiscal year referred to in §311.046(a)(4). The worksheet was adopted by the department in August 1994 for use in the ASCBS survey. With the proposed change to electronic reporting in 2007, the department will continue to collect the salient information collected by Worksheet 1-A, but not in the same paper format. Section 311.046(b) requires nonprofit hospitals and hospital systems to prepare an annual report of their community benefits plan that contains specific hospital data and to report this information to the department. Filing the ASCBS online will satisfy part of the requirements of §311.046.

Subchapter C (Designation of Sites Serving Medically Underserved Populations), §§13.31 - 13.34, is proposed for amendment in order to authorize the department to use "Site-MUP" as an abbreviation for "sites serving medically underserved populations," to reflect a name change from Texas Department of Health to the Department of State Health Services, and to change who the applications should be mailed to in the Department of State Health Services, since the Office of Policy and Planning has been renamed the Center for Health Statistics.

Subchapter D (Limited Liability Certification), §§13.41 - 13.48, concerns the certification of a nonprofit hospital or hospital system as a legal entity for the purpose of limited liability of non-economic damage awards. It caps or limits the amount of money awarded to patients who sue hospitals for pain and suffering awards (non-economic damage awards). New §13.41 will incorporate the new statutory certification and reporting requirements and deadlines required by Senate Bill (SB) 1378, 79th Legislative Session. The proposed new rule covers definitions, eligibility rules for certification, mandatory deadline for hospitals to request certification, duties of the department in certifying hospitals and systems, how the department will verify eligibility, and the effective date of certification. Health and Safety Code, §311.0456, requires the department to certify nonprofit hospitals and hospital systems for limited liability for non-economic damage awards if the hospitals or hospital systems meet certain charity care criteria stated in the law. The date for the department to certify hospitals and hospital systems was changed by SB 1378 from April 30th of each year to December 31st of each year.

Subchapter F (Medically Underserved Areas and Resident Pharmacists), §13.61, is proposed for amendment to change the Texas Department of Health to the Department of State Health Services.

FISCAL NOTE

Bruce Gunn, Ph.D., Manager, Health Provider Resources Branch, Center for Health Statistics, has determined that for each year the sections will be in effect, there will be no fiscal impact on state or local governments as a result of administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Bruce Gunn, Ph.D. has also determined there will be no effect on small businesses or micro-businesses as a result of the proposed sections. This was determined by interpretation of the rules that those entities will not be required to alter their business practices to comply with the sections as proposed. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no effect on local employment.

PUBLIC BENEFIT

Bruce Gunn, Ph.D. has determined that for each of the first five years that these sections are in effect, the following public benefits are anticipated:

Subchapter B, §13.11 and §§13.13 - 13.19. As a result of amending this subchapter and repealing §13.12 and §13.20, the department will collect more accurate and useful hospital financial, utilization, and charity care data and will improve the timeliness of submitting reports to the Texas State Comptroller's office and the Office of the Attorney General under the deadline required by §311.0455 related to nonprofit hospital data. The reason for this is that the data will be collected with an online survey rather than a paper survey.

Subchapter C, §§13.31 - 13.34. These amendments are editorial in nature and correct references to the department.

Subchapter D, §13.41. The public benefit will be the improved and timely determination of a hospital's eligibility for limited liability certification. The change in certification deadline from May 31st to December 31st will allow the hospital team to use edited and verified hospital data to certify hospitals because hospital charity care data are not routinely verified until later in the year, November through December. Public and for-profit hospitals are not affected by these sections and will not benefit from these amendments. New §13.41 will simplify the rules by incorporating the language in eight sections into one section.

Subchapter F, §13.61. These amendments are editorial in nature and correct references to the department.

REGULATORY ANALYSIS

The department has determined that these proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productively, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Bruce Gunn, Ph.D., Manager, Health Provider Resources Branch, Center for Health Statistics, Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261 or by e-mail to bruce.gunn@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER B. DATA COLLECTION

25 TAC §13.11, 13.13 - 13.19

STATUTORY AUTHORITY

The proposed amendments are authorized by the Education Code, §61.924 which authorizes the department to define medically underserved areas for the resident pharmacy positions; Occupations Code, §157.052 which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Health and Safety Code, §§311.031 - 311.048 which requires hospitals, including nonprofit hospitals, to provide financial, utilization, and charity care data to the department; §311.0456 which authorizes the department to issue limited liability certification to nonprofit hospitals and hospital systems that meet stated criteria; §311.046 which describes the survey forms and methods of collection of data from nonprofit hospitals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The amendments affect Education Code, Chapter 61; Occupations Code, Chapter 157; Health and Safety Code, Chapters 311, 531 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§13.11. Purpose and Scope.

The purpose of the sections in this subchapter [~~chapter~~] is to implement Health and Safety Code, Chapter 104, Subchapter D, which requires the department to adopt rules covering the collection of data from health care facilities, such as hospitals, and the dissemination of data to facilitate health planning and resource development; Health and Safety Code, Chapter 311, Subchapters C and D concerning the collection and reporting of hospital financial and utilization data including data regarding the provision of levels of charity care by certain nonprofit hospitals, and the submission of an annual report of a community benefits plan by certain nonprofit hospitals. The scope of this subchapter is to describe the criteria and procedures which the department will use in implementing data collection, dissemination, and reporting requirements. This subchapter will cover the collection and dissemination of data from the public or private hospitals that are included in the definition of the term "health care facilities" in the Health and Safety Code, Chapter 104, Subchapter A. The remaining entities included in the definition of the term "health care facilities" are not covered by this subchapter. If data covered by this subchapter will be collected from a public or private hospital that is a general or special hospital licensed under the Health and Safety Code, Chapter 241; a private mental hospital licensed under the Health and Safety Code, Chapter 577; or a treatment facility licensed under the Health and Safety Code, Chapter 464, the data will be collected under authority of and in compliance with the requirements of the Health and Safety Code, Chapters 104 and 311.

§13.13. Definitions.

The following words and terms, when used in this subchapter [~~in these sections~~], shall have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Board--The Texas Board of Health.~~]

(1) [~~(2)~~] Chapter 104--Provisions relating to the data collection responsibilities of the Department of State Health Services [~~Texas Department of Health~~] as the state health planning and development agency found within the Health and Safety Code, Title 2.

(2) [~~(3)~~] Chapter 311--Provisions relating to the powers and duties of hospitals found within the Health and Safety Code, Title 4.

(3) [~~(4)~~] Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent and/or providing, funding or otherwise financially supporting health care services provided to financially indigent persons through other nonprofit or public outpatient clinics, hospitals or health care organizations.

(4) [~~(5)~~] Community benefits--The unreimbursed cost to a hospital of providing charity care, government-sponsored indigent health care, donations, education, government-sponsored program services, research, and subsidized health services. Community benefits do not include the cost to the hospital of paying any taxes or other governmental assessments.

(5) [~~(6)~~] Department--The Department of State Health Services [~~Texas Department of Health~~].

(6) [~~(7)~~] Donations--The unreimbursed costs of providing cash and in-kind services and gifts, including facilities, equipment, personnel, and programs, to other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(7) [~~(8)~~] Education-related cost--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting educational benefits, services, and programs including education of medical professionals and health care providers; scholarships and funding to medical schools, colleges, and universities for health professions education; education of patients concerning diseases and home care in response to community needs; and community health education through informational programs, publications, and outreach activities in response to community needs.

(8) [~~(9)~~] Financially indigent--An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(9) [~~(10)~~] Government sponsored indigent health care--The unreimbursed cost to a hospital of providing health care services to recipients of Medicaid and other federal, state, or local indigent health care programs, eligibility for which is based on financial need.

(10) [~~(11)~~] Government-sponsored program unreimbursed costs--The unreimbursed cost to the hospital of providing health care services to the beneficiaries of Medicare, the Civilian Health and Medical Program of the Uniformed Services, and other federal, state, or local government health care programs.

(11) [~~(12)~~] Health care facility--Regardless of ownership, a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic which performs ambulatory surgical procedures, rural health initiative clinic, urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and other facilities as defined by federal law, but does not include the office of physicians or practitioners of the healing arts singly or in groups in the conduct of their profession.

(12) [~~(13)~~] Health care organization--A nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

(13) [~~(14)~~] Hospital--A general or special hospital licensed under the Health and Safety Code, Chapter 241; a private mental hospital licensed under the Health and Safety Code, Chapter 577; and a

treatment facility licensed under the Health and Safety Code, Chapter 464.

[(15) Hospital Data Advisory Committee--An advisory group, appointed by the board, which assists the department in carrying out its responsibilities under Health and Safety Code, Chapter 311.]

(14) [(16)] Hospital eligibility system--The financial criteria and procedure used by a hospital to determine if a patient is eligible for charity care. The system shall include income levels and means testing indexed to the federal poverty guidelines; provided, however, that a hospital may not establish an eligibility system which sets the income level eligible for charity care lower than that required by counties under §61.023 or higher, in the case of the financially indigent, than 200% of the federal poverty guidelines. A hospital may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(15) [(17)] Hospital system--A system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

(16) [(18)] Medically indigent--A person whose medical or hospital bills after payment by third-party payors exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(17) [(19)] Net patient revenue--An accounting term that shall be calculated in accordance with generally accepted accounting principles for hospitals.

(18) [(20)] Nonprofit hospital--

(A) A hospital that is organized as a nonprofit corporation or a charitable trust under the laws of this state or any other state or country and is:

(i) eligible for tax-exempt bond financing; or

(ii) exempt from state franchise, sales, ad valorem, or other state or local taxes. For purposes of determining whether a hospital is "organized" as a nonprofit corporation or charitable trust, the department will look at the entity which holds the hospital license issued by the department; that is the entity which must be organized as a nonprofit corporation or charitable trust.

(B) A "nonprofit hospital" shall not include a hospital that:

(i) is exempt from state franchise, sales, ad valorem, or other state or local taxes;

(ii) does not receive payment for providing health care services to any inpatients or outpatients from any source including, but not limited to, the patient or any person legally obligated to support the patient, third-party payers, Medicare, Medicaid, or any other federal, state, or local indigent care program; payment for providing health care services does not include charitable donations, legacies, bequests, or grants or payments for research; and

(iii) does not discriminate on the basis of inability to pay, race, color, creed, religion, or gender in its provision of services.

(C) A "nonprofit hospital" does not include a hospital that is located in a county with a population under 50,000 where the entire county or the population of the entire county has been designated as a health professional shortage area. A "nonprofit hospital" includes a hospital that is located in a county with a population under 50,000 population where only a subpopulation, partial geographic area or a facility is designated as a health professional shortage area.

(19) [(21)] Patient data--Information derived from individual, acute care, inpatient, and outpatient discharge abstract records.

(20) [(22)] Subsidized health services--Services provided by a hospital in response to community needs for which the reimbursement is less than the hospital's cost for providing the services and which must be subsidized by other hospital or nonprofit supporting entity revenue sources. Subsidized health services include, but are not limited to, emergency and trauma care, neonatal intensive care, freestanding community clinics, and collaborative efforts with local government or private agencies in preventive medicine.

(21) [(23)] Survey--The annual data collection effort conducted by the department to implement the provisions of Health and Safety Code, Chapters 104 and 311.

(22) [(24)] Tax exempt benefits--All of the following, calculated in accordance with standard accounting principles for hospitals for tax purposes using the applicable statutes, rules and regulations regarding the calculation of these taxes:

(A) the dollar amount of federal, state, and local taxes foregone by a nonprofit hospital and its nonprofit supporting entities. For purposes of this definition federal, state, and local taxes include income, franchise, ad valorem, and sales taxes;

(B) the dollar amount of contributions received by a nonprofit hospital and its nonprofit supporting entities; and

(C) the value of tax-exempt bond financing received by a nonprofit hospital and its nonprofit supporting entities.

(23) [(25)] Unreimbursed costs--The costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. For purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

§13.14. Annual Survey of Hospitals (ASH)--Types of Data To Be Reported.

The types of ASH data which hospitals must submit [report] to the Department of State Health Services [Texas Department of Health] (department) through the online survey form are as follows:

(1) - (5) (No change.)

§13.15. Survey Forms and Methods of Reporting Data.

(a) The hospital shall use the online survey form specified by the Department of State Health Services [Texas Department of Health] (department) for reporting purposes. The department shall provide access to an [a hard copy or] electronic survey form, including instructions to each hospital on how to submit hospital data electronically [for reporting electronically and on paper, to each hospital] on an annual basis.

(b) The submitting of data for the Annual Survey of Hospitals (ASH) and the Annual Statement of Community Benefits Standard (ASCBS) will be collected by one online survey form; however, the ASCBS will be required only for nonprofit hospitals. In addition, nonprofit hospitals will be permitted to file the ASCBS at a separate date from filing of the ASH data since state law requires the ASCBS to be filed no later than 120 days after the hospital's fiscal year ends and that date may not coincide with the date for the ASH.

(c) [~~(b)~~] The hospitals shall complete all requested sections on the electronic survey form and submit [~~return~~] it electronically [~~or in paper form by regular mail~~] to the department within 60 days of receipt unless the nonprofit hospital chooses to submit the ASCBS at a different date as allowed by Chapter 311. The hospitals shall submit [~~report~~] data for the hospitals' most recently completed fiscal year. A copy of the hospital's eligibility system and any other information requested shall be sent [~~submitted~~] to the department by regular mail.

(d) [~~(c)~~] The department may request missing or incomplete data by written or telephone request. Hospitals shall complete all requested follow-up in the time frame specified by the department.

(e) [~~(d)~~] A hospital may, but is not required to, provide the data for the ASH [~~required by subsection (b) of this section~~] if the hospital:

(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:

(A) the patient or any person legally obligated to support the patient;

(B) a third party payor; or

(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

§13.16. Verification Report.

The department shall send each reporting hospital a copy of its data verification report prior to the publication of the results of the Annual Survey of Hospitals [~~survey~~]. The hospital shall review the contents of the verification report provided by the department [~~computer generated report~~]. If modifications to the report are necessary, the appropriate changes shall be made on the report, and the hospital administrator shall sign and return the report to the department within 31 days of receipt. If no changes are reported within 31 days, the department shall consider the hospital's report verified.

§13.17. Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311.

(a) Annual report of the Community Benefits Plan (CBP) [~~community benefits plan~~].

(1) The annual CBP report [~~of the community benefits plan~~] may be filed with the department on a hospital or hospital system basis. A CBP developed by a hospital serves as a hospital's operational plan for serving the community's health care needs and sets out goals and objectives for providing community benefits that include charity care and government-sponsored indigent health care.

(2) A nonprofit hospital or hospital system shall file an annual CBP report [~~of the community benefits plan~~] with the department no later than April 30 of the following year.

(3) The nonprofit hospital's or hospital system's annual CBP report [~~of the community benefits plan~~] must include, at a minimum:

(A) (No change.)

(B) a disclosure of the health care needs of the community that were considered in developing the CBP [~~community benefits plan~~];

(C) - (E) (No change.)

(4) In addition to the annual CBP report [~~of the community benefits plan~~], a nonprofit hospital or hospital system shall file a completed worksheet as required by paragraph (3)(E) of this subsection no later than ten working days after the date the hospital or hospital system files its Medicare cost report.

(b) Annual statement of community benefits standard (ASCBS).

(1) Each nonprofit hospital or hospital system shall also report the following information to the department as the ASCBS part of the online survey form [~~part of the annual statement~~]:

(A) - (H) (No change.)

(2) The ASCBS shall [~~annual statement of community benefits standard may~~] be filed online with the department on a hospital or hospital system basis.

(3) A nonprofit hospital or hospital system is required to file an annual statement with the department no later than 120 days after the hospital's or hospital system's fiscal year ends; however, the department will accept the ASCBS [~~annual statement~~] as partially fulfilling the requirement to submit an [~~part of the acceptance of the~~] annual report of the hospital or hospital system CBP [~~community benefits plan~~]. The ASCBS [~~annual statement~~] filed under this subsection shall be based on the most recently completed and audited prior fiscal year of the hospital and shall state which of the standards for providing community benefits has been satisfied. A nonprofit hospital or hospital system may elect to provide community benefits according to any of the following standards:

(A) - (C) (No change.)

(4) (No change.)

(5) A nonprofit hospital or hospital system shall use the ASCBS part of the online survey [~~annual statement of community benefits standard~~] form and accompanying worksheets developed by the department for reporting under this section. Hospitals electing to report on a system basis shall consolidate the individual hospital information into a single ASCBS [~~annual statement of community benefits standard~~] form for the online system. A separate set of worksheets shall be completed for each individual hospital included in the system.

(6) The department will accept written revisions of the ASCBS [~~annual statement of community benefits standard~~] for 30 days after the filing date.

(7) The department may request missing or incomplete data by written or telephone request. Nonprofit hospitals or hospital systems shall answer all requests received from the department [~~complete all requested follow up~~] in the time frame specified by the department.

(8) - (9) (No change.)

~~[(10) Under the Tax Code, §171.063(h), a requirement that a nonprofit hospital provide charity care and community benefits in order to be exempt from franchise tax may be satisfied by a donation of money to the Texas Healthy Kids Corporation established by the Health and Safety Code, Chapter 109, provided that:]~~

~~[(A) the money is donated to be used for a purpose described by the Health and Safety Code, §109.033(c); and]~~

[(B) not more than 10% of the charity care required under any provision of the Health and Safety Code, §311.045, may be satisfied by the donation.]

(10) [(11)] A nonprofit hospital or hospital system under contract with a local county to provide indigent health care services under Health and Safety Code, Chapter 61 may credit unreimbursed costs from direct care provided to an eligible county resident toward meeting the nonprofit hospital's or hospital system's charity care and government-sponsored indigent health care requirement.

(c) Reporting.

(1) The department shall notify nonprofit hospitals in writing that the annual report of the [a] community benefits plan and the online ASCBS form that [statement of community benefits standard which] includes a brief summary of charity care policy and community benefits must be filed in accordance with these rules.

(2) - (3) (No change.)

(4) All hospitals or hospital systems shall report any change of ownership which may affect the nonprofit status of the hospital or hospital system to the Center for Health Statistics, Hospital Survey Unit [Office of Health Information and Analysis, formerly known as the Bureau of State Health Data and Policy Analysis], at the department within 60 days of the effective date of the change.

(d) Posting of sign. Nonprofit hospitals shall prepare a statement notifying the public that the annual report of the CBP [community benefits plan] is public information, that it is filed with the department, and that it is available on request from the Center for Health Statistics, Hospital Survey Unit, Department of State Health Services [Office of Health Information and Analysis, formerly known as the Bureau of State Health Data and Policy Analysis, Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756. The statement must indicate the report's availability date and be posted in prominent places throughout the hospital, including, but not limited to, the waiting areas of the emergency room and the admissions office. Nonprofit hospitals shall also print the statement in the patient guide or other materials that provide the patient with information about the hospital's admissions criteria.

(e) (No change.)

(f) Exemptions. A nonprofit hospital is exempt from the reporting requirement in subsection (c) of this section if the hospital is located in a county with a population under 50,000 and in which the entire county or the population of the entire county has been designated as a "Federally designated Health Professional Shortage Area (HPSA)" ["health professional shortage area"] during the current or any previous fiscal year and has continued to maintain that designation.

(g) (No change.)

§13.18. Noncompliance with Reporting Requirements.

(a) Reporting of data on the online survey form for the Annual Survey of Hospitals (ASH) [Data reporting].

(1) If a hospital does not submit the [a] completed online survey form to the Department of State Health Services [Texas Department of Health] (department) within the 60-day reporting period and in accordance with [established in] §13.15 of this title (relating to Survey Forms and Methods of Reporting Data), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and may be in violation of the Health and Safety Code, Chapter 104. The written notification will also state that the commissioner [of health] may request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital fails to submit the requested data to the department within 30 days of the date the entity received the notification letter.

(B) If the department does not receive the requested data from the non-responding hospital within the specified time frame, the commissioner [of health] may notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital.

(2) (No change.)

(b) Report of the Community Benefit Plan (CBP) and the online Annual Statement of Community Benefits Standard (ASCBS) [Community benefit plans].

(1) A nonprofit hospital or hospital system that does not timely submit a CBP report [of the community benefits plan] to the Department of State Health Services [Texas Department of Health] (department) according to the requirements and procedures established in these sections is subject to a civil penalty of not more than $1,000 for each day of noncompliance, under the provisions of Health and Safety Code, Chapter 311.

(2) If a nonprofit hospital or hospital system does not submit a CBP report [of the community benefits plan] to the department within the reporting period established in §13.17 of this title (relating to Duties of Nonprofit Hospitals under Health and Safety Code, Chapter 311), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in noncompliance with department reporting requirements and may be in violation of the Health and Safety Code, Chapter 311. The written notification will also state that the commissioner [of health] may request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital or hospital system fails to submit the report to the department within ten days after receipt of the written notification letter.

(B) If the department does not receive the CBP report [of the community benefits plan] from the non-responding hospital or hospital system within the specified time frame, the commissioner [of health] may notify the attorney general in writing of the entity's noncompliance. The department will send a copy of the written notification to the hospital or hospital system.

§13.19. Confidential Data.

(a) The following data received by the Department of State Health Services [Texas Department of Health] (department) from a hospital is confidential under authority of the Health and Safety Code, Chapters 104 and 311:

(1) - (2) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703719

Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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25 TAC §13.12, §13.20

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by the Education Code, §61.924 which authorizes the department to define medically underserved areas for the resident pharmacy positions; Occupations Code, §157.052 which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Health and Safety Code, §§311.031 - 311.048 which requires hospitals, including nonprofit hospitals, to provide financial, utilization, and charity care data to the department; §311.0456 which authorizes the department to issue limited liability certification to nonprofit hospitals and hospital systems that meet stated criteria; §311.046 which describes the survey forms and methods of collection of data from nonprofit hospitals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The repeals affect Education Code, Chapter 61; Occupations Code, Chapter 157; Health and Safety Code, Chapters 311, 531 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§13.12. Scope.

§13.20. Open Records Request Procedures.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. DESIGNATION OF SITES SERVING MEDICALLY UNDERSERVED POPULATIONS

25 TAC §§13.31 - 13.34

STATUTORY AUTHORITY

The proposed amendments are authorized by the Education Code, §61.924 which authorizes the department to define medically underserved areas for the resident pharmacy positions; Occupations Code, §157.052 which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Health and Safety Code, §§311.031 - 311.048 which requires hospitals, including nonprofit hospitals, to provide financial, utilization, and charity care data to the department; §311.0456 which authorizes the department to issue limited liability certification to nonprofit hospitals and hospital systems that meet stated criteria; §311.046 which describes the survey forms and methods of collection of data from nonprofit hospitals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The amendments affect Education Code, Chapter 61; Occupations Code, Chapter 157; Health and Safety Code, Chapters 311, 531 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§13.31. Purpose and Scope.

(a) Purpose. The purpose of these sections is to implement the provisions in the Texas Occupations Code, §157.052, by the establishment of program rules for the determination of sites serving medically underserved populations (Site-MUPs). Designated sites will be eligible for qualified advanced nurse practitioners and physician assistants to carry out prescription drug orders in accordance with rules developed by the Texas Board of Nurse Examiners and Texas Medical Board [~~Texas Board of Medical Examiners~~].

(b) Scope. The scope of these sections is to describe the criteria and procedures that the Department of State Health Services [~~Texas Department of Health~~] (department) will use in determining Site-MUPs [~~sites serving medically underserved populations~~]. The criteria will apply to sites not already qualified under the other definitions of eligible sites identified in the Texas Occupations Code, §157.052.

(c) Administration. The department shall designate Site-MUPs [~~sites serving a medically underserved population~~].

§13.32. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

[~~(2) Board--The Texas Board of Health.~~]

(2) [~~(3)~~] Department--The Department of State Health Services [~~Texas Department of Health~~].

(3) [~~(4)~~] Eligible client populations--Residents meeting the eligibility criteria for participation in any of the following programs:

(A) federally funded health care programs, including, but not limited to: AIDS (health care delivery programs); community and migrant health centers (Public Health Service Act, §§329 and 330 grantees); family planning; homeless (including Public Health Service Act, §340 grantees); Medicaid; or Medicare;

(B) state funded health care programs, including, but not limited to: AIDS (health care delivery programs); children with

special health care needs (CSHCN); Medicaid; state primary health care; or student health centers (state funded colleges and universities); or

(C) locally funded health care programs, including, but not limited to: locally supported nonprofit health care programs; programs funded by city or county governmental entities; or programs funded by hospital districts.

(4) [~~(5)~~] Primary care physicians--Physicians practicing in family/general practice, obstetrics/gynecology, internal medicine or pediatrics.

§13.33. Criteria for Designating Site-MUPs [~~Sites Serving Medically Underserved Populations~~].

(a) The department [~~Texas Department of Health (department)~~] will designate a site located in an area that has an insufficient number of physicians providing services to eligible client populations if it is determined that:

(1) - (2) (No change.)

(b) (No change.)

§13.34. Application Process.

(a) Applicants must submit an application form, provided by the department [~~Texas Department of Health (department)~~], which includes the following information:

(1) - (2) (No change.)

(3) adequate demonstration that the site meets the criteria in §13.33(a) or (b) of this title (relating to Criteria for Designating Site-MUPs [~~Sites Serving Medically Underserved Populations~~]); and

(4) (No change.)

(b) (No change.)

(c) Change in location of a designated site. A Site-MUP designation remains in effect if an applicant verifies that the new site remains in the original service area and provides the same services and staffing and serves the same populations that were originally used to designate the site under subsection (a)(1) or (2) of this section.

(d) [~~(c)~~] If a site is determined ineligible based on the criteria defined in §13.33 of this title [~~(relating to Criteria for Designating Sites Serving Medically Underserved Populations)~~], the department will notify the applicant in writing.

(e) [~~(d)~~] Applications should be directed to the Health Professions Resource Center, Center for Health Statistics, Department of State Health Services [~~Director, Office of Policy and Planning, Texas Department of Health~~], 1100 West 49th Street, Austin, Texas 78756-3199.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. LIMITED LIABILITY CERTIFICATION

25 TAC §§13.41 - 13.48

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by the Education Code, §61.924 which authorizes the department to define medically underserved areas for the resident pharmacy positions; Occupations Code, §157.052 which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Health and Safety Code, §§311.031 - 311.048 which requires hospitals, including nonprofit hospitals, to provide financial, utilization, and charity care data to the department; §311.0456 which authorizes the department to issue limited liability certification to nonprofit hospitals and hospital systems that meet stated criteria; §311.046 which describes the survey forms and methods of collection of data from nonprofit hospitals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The repeals affect Education Code, Chapter 61; Occupations Code, Chapter 157; Health and Safety Code, Chapters 311, 531 and 1001; and Government Code, Chapter 531. Review of the rule implements Government Code, §2001.039.

§13.41. Purpose and Authority.
§13.42. Definitions.
§13.43. Eligible Entities.
§13.44. Certification Criteria.
§13.45. Mandatory Submission Deadline.
§13.46. Duties of the Department.
§13.47. Effective Date of Certification.
§13.48. Effect of Certification.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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25 TAC §13.41

STATUTORY AUTHORITY

The proposed new rule is authorized by the Education Code, §61.924 which authorizes the department to define medically underserved areas for the resident pharmacy positions; Occupations Code, §157.052 which authorizes the department to define

medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Health and Safety Code, §§311.031 - 311.048 which requires hospitals, including nonprofit hospitals, to provide financial, utilization, and charity care data to the department; §311.0456 which authorizes the department to issue limited liability certification to nonprofit hospitals and hospital systems that meet stated criteria; §311.046 which describes the survey forms and methods of collection of data from nonprofit hospitals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The new rule affects Education Code, Chapter 61; Occupations Code, Chapter 157; Health and Safety Code, Chapters 311, 531 and 1001; and Government Code, Chapter 531. Review of the rule implements Government Code, §2001.039.

§13.41. Limited Liability Certification.

(a) Purpose. This section provides the criteria and procedures the department uses to determine a nonprofit hospital's or hospital system's eligibility for limited liability certification by the department.

(b) Authority. This section is authorized by Health and Safety Code, §311.0456 (§311.0456), which requires the department to receive, determine eligibility, and certify limited liability status for nonprofit hospitals or hospital systems that meet the requirements of these sections.

(c) Definitions. Terms used in this subchapter have the following meanings, unless the context clearly indicates otherwise. Terms not defined have their common meanings.

(1) Department--The Department of State Health Services.

(2) Charity care--Is defined in Health and Safety Code, §311.031(2).

(3) Net patient revenue--Is defined in Health and Safety Code, §311.042(8).

(d) Eligible Entities. This section applies to a nonprofit hospital and hospital system that:

(1) meets the definition of nonprofit hospital in the Health and Safety Code, §311.042(9)(A); or

(2) is a corporation certified by the Texas Medical Board as a nonprofit organization under Occupations Code, §162.001, whose sole member is a qualifying hospital or hospital system.

(e) Certification Criteria. A nonprofit hospital or hospital system that satisfies the eligibility criteria under this section must additionally meet the following certification criteria:

(1) provide charity care in an amount equal to or at least 8% of net patient revenue during the most recent fiscal year of the hospital or system; and

(2) provide at least 40% of the total charity care provided in the county in which the hospital is located.

(A) Charity care for purposes of this section is determined by the department by checking the report submitted by the hospital or system under the Health and Safety Code, §311.033 and the statement of community benefits and charity care submitted by the nonprofit hospital or hospital system under Health and Safety Code, §311.045.

(B) If a report under §311.033 is not available for all hospitals in a county in which a nonprofit hospital meeting the requirement in paragraph (1) of this subsection is requesting certification, the department shall determine the eligibility of the hospital or hospital system using other sources of verified charity care information available at the time of certification.

(f) Mandatory Submission Deadline. Not later than May 31 of each year for which certification is sought, a nonprofit hospital or hospital system must submit a written request for certification stating that the hospital or system is eligible for certification. Reports submitted after May 31 of each reporting year will not be considered for certification, and exceptions to the deadline will not be granted.

(g) Duties of the Department. The department will determine whether a hospital or hospital system is an eligible entity and meets the certification criteria not later than December 31 of the year in which the department receives the request.

(h) Effective Date of Certification. A certification issued under this section to a nonprofit hospital or hospital system takes effect on December 31 of that year for which certification is issued and expires on the anniversary of that date.

(i) Effect of Certification. Section 311.0456 describes the effect of certification on liability for noneconomic damages.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 17, 2007.

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Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 458-7111 x6972

SUBCHAPTER F. MEDICALLY UNDERSERVED AREAS AND RESIDENT PHARMACISTS

25 TAC §13.61

STATUTORY AUTHORITY

The proposed amendment is authorized by the Education Code, §61.924 which authorizes the department to define medically underserved areas for the resident pharmacy positions; Occupations Code, §157.052 which authorizes the department to define medically underserved areas for sites at which advanced practice nurse practitioners and physician assistants may carry out prescription drug orders; Health and Safety Code, §§311.031 - 311.048 which requires hospitals, including nonprofit hospitals, to provide financial, utilization, and charity care data to the department; §311.0456 which authorizes the department to issue limited liability certification to nonprofit hospitals and hospital systems that meet stated criteria; §311.046 which describes the survey forms and methods of collection of data from nonprofit hospitals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to

adopt rules and policies necessary for the operation and provision of health and human services by the department and for administration of Health and Safety Code, Chapter 1001.

The amendment affects Education Code, Chapter 61; Occupations Code, Chapter 157; Health and Safety Code, Chapters 311, 531 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§13.61. Medically Underserved Areas and Resident Pharmacists.

(a) This section implements the responsibility of the Department of State Health Services (department) [~~Texas Department of Health~~] to define the term "medically underserved areas" under the Education Code, §61.924 [~~§61.854~~]. That section provides that each college of pharmacy shall give priority consideration to an applicant for a resident pharmacist position who demonstrates a willingness to practice pharmacy in medically underserved areas of this state, as defined by the department [~~Texas Department of Health~~].

(b) The term, "medically underserved areas," is defined as meeting any of the criteria:

(1) designated by the United States Secretary of Health and Human Services (secretary) as a whole county or partial county Health Professional Shortage Area (HPSA) [~~an area~~] in a metropolitan or nonmetropolitan area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary [~~the United States Secretary of Health and Human Services (secretary)~~] determines has a primary care physician shortage and which is not reasonably accessible to an adequately served area as delineated in 42 United States Code (U.S.C.), §254e (42 Code of Federal Regulations (C.F.R.), Part 5);

(2) designated by the secretary as a population group HPSA which the secretary determines to have [~~such~~] a primary care physician shortage as delineated in 42 U.S.C., §254e (42 C.F.R. Part 5);

(3) designated by the secretary as a facility HPSA for a public or nonprofit private medical facility or other facility which the secretary determines has [~~such~~] a primary care physician shortage as delineated in 42 U.S.C., §254e (42 C.F.R., Part 5); or

(4) designated by the secretary as an area with a medically underserved population (MUP) and [~~designated by the secretary as~~] having a shortage of primary care physicians and personal health services as defined in 42 U.S.C., §254c (42 C.F.R., Part 491.5, Subpart A).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 458-7111 x6972

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CHAPTER 169. ZOONOSIS CONTROL
SUBCHAPTER A. RABIES CONTROL AND ERADICATION

25 TAC §§169.21 - 169.34

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§169.21 - 169.34, concerning the control of rabies.

BACKGROUND AND PURPOSE

These rules are necessary to comply with Health and Safety Code, Chapter 826, "Rabies," §826.011, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to administer the rabies control program and adopt rules necessary to effectively administer the program.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.21 - 169.34 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

Specifically, the sections cover definitions, information relating to the control of rabies, preexposure rabies vaccination, reports of human exposure to rabies, facilities for the quarantining or impounding of animals, quarantine method and testing, requirements of a quarantine facility, vaccination requirement, disposition of domestic animals exposed to rabies, interstate movement of dogs and cats into Texas, international movement of dogs and cats into Texas, submission of specimens for laboratory examination, and statewide quarantine.

After carefully considering the alternatives, the department believes the rules as amended are the best method of implementing the statute to protect the public health with rules for the control and eradication of rabies in the State of Texas.

SECTION-BY-SECTION SUMMARY

The amendment to §169.21 modifies the language to make it more concise.

The amendment to §169.22 updates the definitions and the legacy agency name.

The amendment to §169.23 changes Zoonosis Control Division to Zoonosis Control Branch.

The amendment to §169.24 clarifies preexposure rabies vaccination.

The amendment to §169.25 clarifies potential rabies exposure.

The amendment to §169.26 updates the legacy agency name, clarifies facility and animal care requirements, and deletes the last paragraph because the date by which compliance was required has passed.

The amendment to §169.27 clarifies language relating to rabies exposure and animal quarantine and disposition.

The amendment to §169.28 clarifies and updates language relating to the requirements of quarantine facilities.

The amendment to §169.29 clarifies the rabies vaccination requirement.

The amendment to §169.30 clarifies language pertaining to disposition of domestic animals exposed to rabies.

The amendments to §169.31 and §169.32 clarify language pertaining to dogs and cats coming into Texas from other states and other countries.

The amendment to §169.33 updates the legacy agency name, and clarifies language pertaining to the submission of rabies specimens for laboratory examination.

The amendment to §169.34 replaces the board with the Executive Commissioner of the Health and Human Services Commission.

The proposed revisions to the sections update and clarify language to enable those subject to the sections to more readily comply. The amendments enhance implementation of a comprehensive rabies control program that will diminish public exposure to rabies, reduce morbidity and mortality from rabies among humans and animals, and provide for humane treatment of animals suspected of rabies.

FISCAL NOTE

Martha McGlothlin, Section Director, Community Preparedness Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McGlothlin has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. The Texas Veterinary Medical Association and the Texas State Board of Medical Examiners were contacted about proposed changes to rabies vaccination certificate requirements; there is not an anticipated fiscal impact for veterinarians who will need to comply with these amendments. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. McGlothlin has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be that it enhances public health and safety by advising pre-exposure rabies vaccination of persons at high risk for rabies exposure; requiring reporting of potential exposure of humans to rabies; imposing quarantine or testing of animals that potentially exposed a human to rabies; setting standards for the humane and effective quarantine of these animals; establishing minimum standards for vaccination of dogs and cats against rabies with associated recordkeeping and records retention; establishing requirements for the disposition of domestic animals exposed to a rabid animal; establishing rabies vaccination requirements for interstate and international movement of dogs and cats into Texas; establishing standards for the submission of specimens to the department's laboratory for rabies testing; and establishing statewide rabies quarantine for particular wildlife species. After careful consideration of alternatives, the department concludes that the rules, as revised, provide a clear, concise comprehensive policy of rabies control that will diminish public exposure to rabies, reduce morbidity and mortality from rabies among humans and animals, and provide for humane treatment of animals suspected of rabies. This policy is the most efficient use of public and private resources to achieve these goals.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, Department of State Health Services, Community Preparedness Section, Zoonosis Control Branch, 1100 West 49th Street, Austin, Texas 78756, or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §826.011, which provides the department with the authority to administer the rabies control program and adopt rules necessary to effectively administer this program; §826.012, which provides that rules adopted by the department are minimum standards for rabies control; §826.042, which provides that the department shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine; §826.045, which requires the department to adopt rules to enforce an area rabies quarantine; §826.051, which requires the department to adopt rules governing the types of facilities that may be used to quarantine or impound animals; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect Health and Safety Code, Chapters 826 and 1001; and Government Code, Chapter 531. Review of the rules implements Government Code, §2001.039.

§169.21. Purpose.

The purpose of these sections is to protect [~~the~~] public health by establishing uniform rules for the control and eradication of rabies in the State of Texas, in accordance with Chapter 826 of the Texas Health and Safety Code.

§169.22. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Unless defined below, all words have definitions as provided in the Texas Health and Safety Code, §826.002.

(1) (No change.)

(2) Assistance animal [~~dog~~]--An animal [~~A dog~~] that is specially trained or equipped to help a person with a disability [~~physical challenge~~] and that:

(A) is used by a person with a disability [~~physical challenge~~] who has satisfactorily completed a specific course of training in the use of the animal [~~dog~~]; and

(B) has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with disabilities [~~a physical challenge~~] as reputable and competent to provide animals [~~dogs~~] with training of this type.

(3) Cat--Any domestic cat, excluding hybrids [~~Felis catus~~].

(4) Confinement--The restriction of an animal to an area, in isolation from other animals and people, except for contact necessary for its care.

(5) [~~(4)~~] Currently vaccinated--Vaccinated and satisfying all the following criteria.

(A) The animal must have been vaccinated against rabies with a vaccine licensed by the United States Department of Agriculture (USDA) for that animal species at or after the minimum age requirement and using the recommended route of administration for the vaccine [~~according to the label recommendations of a United States Department of Agriculture (USDA) approved vaccine~~].

(B) At least 30 days have elapsed since the initial vaccination.

(C) The time elapsed since the most recent vaccination has not exceeded the recommended interval for booster vaccination as established by the manufacturer [~~label recommendations of the vaccine~~].

(6) [~~(5)~~] Custodian--A person or agency which feeds, shelters, harbors, owns, has possession or control of, or has the responsibility to control an animal.

(7) [~~(6)~~] Department--The Department of State Health Services [~~The Texas Department of Health (TDH)~~].

(8) [~~(7)~~] Dog--Any domestic dog, excluding hybrids [~~Canis familiaris, including hybrids~~].

(9) [~~(8)~~] Domestic animal--Any animal normally adapted to live in intimate association with humans or for the advantage of humans.

[~~(9) Domestic dog--Any Canis familiaris, excluding hybrids.~~]

(10) Domestic ferret --Any *Mustela putorius furo* [~~Mustela putorius furo~~].

(11) Health service region--A contiguous group of Texas counties, so designated by the Executive Commissioner of the Health and Human Services Commission.

(12) [~~(11)~~] High-risk animals--Those animals which have a high probability of transmitting rabies; they include skunks, bats, [~~species of~~] foxes [~~indigenous to North America~~], coyotes, and raccoons.

(13) [~~(12)~~] Housing facility--Any room, building, or area used to contain a primary enclosure or enclosures.

(14) [~~(13)~~] Humanely killed--To cause the death of an animal by a method which:

(A) rapidly produces unconsciousness and death without [~~visible evidence of~~] pain or distress; or

(B) utilizes anesthesia produced by an agent which causes painless loss of consciousness, and death following such loss of consciousness.

(15) [~~(14)~~] Hybrid--Any offspring of two animals of different species.

(16) [~~(15)~~] Impoundment--The collecting and confining of an animal by a government entity or government contractor pursuant to a state or local ordinance [~~because of a state or local ordinance or because of a contract with a county or municipality~~].

(17) [~~(16)~~] Impoundment facility--An enclosure or a structure in which an animal is collected or confined by a government entity or government contractor pursuant to a state or local ordinance [~~because of a state law or local ordinance or because of a contract with a county or municipality~~].

[~~(17) Isolation--The separation of an animal exposed or potentially exposed to rabies.~~]

(18) Local rabies control authority--The officer designated by the municipal or county governing body under the Texas Health and Safety Code, §826.017 [~~Chapter 826~~].

(19) Low-risk animals--Those animals which have a low probability of transmitting rabies; they include all animals of the orders Didelphimorphia [~~Marsupialia~~], Insectivora, Rodentia, Lagomorpha, and Xenarthra.

(20) Observation period--The time following a potential rabies exposure [~~bite incident~~] during which the [~~biting animal's~~] health status of the animal responsible for the potential exposure must be monitored. The observation period for [~~domestic~~] dogs, cats, and domestic ferrets (only) is 10 days (240 hours); the observation period for other animals, not including those defined as high risk or low risk, is 30 days. All observation periods are calculated from the time of the potential exposure.

(21) Police service animal [~~dog~~]--An animal as defined in the Texas Penal Code, §38.151 [~~Domestic dog that is owned or employed by a governmental law enforcement agency~~].

(22) (No change.)

[~~(23) Public health region--A contiguous group of Texas counties, so designated by the board.~~]

(23) [~~(24)~~] Quarantine facility--A structure where animals are held for rabies observation.

(24) [~~(25)~~] Quarantine period--That portion of the observation period during which an animal that has potentially exposed a human to rabies [~~a biting animal~~] is under physical confinement [~~physically confined~~] for observation as provided for in §169.27 of this title (relating to Quarantine Method and Testing).

(25) [~~(26)~~] Sanitize--To make physically clean and to destroy disease-producing agents.

[(27) Therapy dog--A dog that helps a person with a diagnosed emotional disorder for whom a letter has been issued by a physician stating that the removal of the animal would be detrimental to the person's emotional health.]

(26) [(28)] Unowned animal--Any animal for which a custodian [an owner] has not been identified.

(27) [(29)] Vaccinated--Properly administered [injected] by or under the direct supervision of a [licensed] veterinarian with a rabies vaccine licensed for use in that species by the USDA [United States Department of Agriculture].

(28) Veterinarian--A person licensed to practice veterinary medicine in the United States.

(29) [(30)] Zoonosis Control Branch [Zoonosis Control Division (ZCD)]--The branch [division] within the department [Texas Department of Health] to which the responsibility for administering [implementing] these rules is assigned.

(30) [(31)] Zoonosis control representative--Any person employed by the department to perform zoonosis control duties [ZCD].

§169.23. Information Relating to the Control of Rabies.

The department's Zoonosis Control Branch [Zoonosis Control Division (ZCD)] will assume the responsibility of collecting, analyzing, and preparing monthly and annual summations of rabies activity in the state. These reports will be forwarded to national, state, and municipal agencies as required, and selected statistics will be sent to veterinary medical and animal control organizations throughout the state.

§169.24. Preexposure Rabies Vaccination [Immunization].

Preexposure rabies vaccinations [immunization] should be administered to all individuals whose activities place them at a significant risk of exposure to rabies, in accordance with the recommendations of the Centers for Disease Control and Prevention (CDC) Advisory Committee on Immunization Practices [CDC Immunization Practices Advisory Committee] (ACIP).

§169.25. Reports of Human Exposure to Rabies.

(a) Any person having knowledge of a potential rabies exposure to a human [as defined in the Texas Health and Safety Code, §826.041,] will report the incident to the local rabies control authority as soon as possible after [, but not later than 24 hours from the time of] the incident. This requirement does not apply to contacts with [bites by] low-risk animals as defined in §169.22 of this title (relating to Definitions).

(b) The [owner or] custodian of an [the potentially rabid] animal that has potentially exposed a person to rabies will place that animal in quarantine or submit it for testing as prescribed in §169.27 of this title (relating to Quarantine Method and Testing).

(c) (No change.)

§169.26. Facilities for the Quarantining or Impounding of Animals.

(a) Generally.

(1) - (5) (No change.)

(6) Management. The manager of a quarantine facility should be either [a licensed veterinarian or] an individual who has satisfactorily completed an appropriate department [TDH] training course or a veterinarian.

(7) - (11) (No change.)

(12) Primary enclosures. Primary enclosures shall:

(A) - (E) (No change.)

(F) provide sufficient space to allow each animal to turn around fully, stand, sit, and lie in a comfortable [normal] position.

(b) Feeding.

(1) [Dogs and cats shall be fed at least once a day except as directed by a licensed veterinarian.] All [The] food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition, size, and age [and size] of the animal [dog or cat].

(2) Dogs and cats shall be fed at least once a day, except as directed by a veterinarian.

(3) [(2)] Domestic ferrets shall have continuous [24-hour] access to food. [The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition, size, and age of the domestic ferret.]

(4) [(3)] All other animals shall be fed appropriately as described on the packaging of a commercial, species-specific food or as directed by a veterinarian. [Food receptacles shall be accessible to all dogs, cats, and domestic ferrets and shall be located so as to minimize contamination by excreta. Food pans or bowls shall be durable and kept clean and sanitary. Disposable food receptacles may be used but must be discarded after each feeding or for domestic ferrets, after 24 hours of use. Self feeders may be used for feeding dry pet foods and shall be kept clean and sanitary.]

(5) Food receptacles shall be accessible to all animals and shall be located so as to minimize contamination by excreta. Food receptacles shall be durable and kept clean and sanitary. Disposable food receptacles may be used but must be discarded after each feeding or, for domestic ferrets, after 24 hours of use. Self feeders may be used for feeding dry foods to animals acclimated to their use.

(c) Watering. If potable water is not accessible to all animals [dogs and cats] at all times, it shall be offered to them at least twice daily for periods of not less than one hour, except as directed by a [licensed] veterinarian. Drinking bottles may be used for animals acclimated to their use. Domestic ferrets shall have potable water accessible at all times, provided in drinking bottles of appropriate size to maintain a fresh supply. Water receptacles shall be kept clean and sanitary.

(d) (No change.)

(e) Pest Control. A regular program for the control of insects, ectoparasites, and other pests shall be established and maintained. The facility shall be free of visible signs of insects, rodents, and other vermin infestations at all times.

(f) (No change.)

(g) This section applies to all animal shelters located in counties with a population of 75,000 or greater as required by the Texas Health and Safety Code, Chapter 823, and to all quarantine or impoundment facilities regardless of county population.

[(h) Impoundment facilities in counties with a population less than 75,000 have until January 16, 2005, to be in compliance with the minimum standards set forth in this section.]

§169.27. Quarantine Method and Testing.

(a) When a [domestic] dog, cat, or domestic ferret which has potentially exposed [bitten] a human to rabies has been identified, the [owner or] custodian will [be required to] place the animal in quarantine as defined in the Texas Health and Safety Code, §826.002, until the end of the 10-day observation period. The observation period will begin at the time of the exposure. [Unvaccinated animals should not be vaccinated against rabies during the observation period; however,

animals may be treated for unrelated medical problems diagnosed by a veterinarian. The observation period will begin at the time of the bite incident. If the animal becomes ill during the observation period, the local rabies control authority must be notified by the person having possession of the animal.] The animal must be placed in a department-licensed quarantine facility specified by the local rabies control authority and observed at least twice daily. However, the local rabies control authority may allow the animal to be quarantined [placed] in a veterinary clinic. As an alternative, the local rabies control authority may allow home confinement [quarantine if the following criteria can be met]. If the potential rabies exposure occurs in a city or county other than where the animal's custodian resides, the animal may be transferred to a department-licensed quarantine facility or a veterinary clinic in the city or county of the custodian's residence or allowed home confinement, if applicable, if there is mutual agreement to do so between the local rabies control authorities for the city or county where the exposure occurred and where the custodian resides. The alternative to quarantining (to include home confining) a dog, cat, or domestic ferret is to have the animal humanely killed in such a manner that the brain is not damaged and a suitable specimen (head with brain intact or brain) submitted to a department-designated laboratory for rabies testing as specified in subsection (h) of this section. To allow home confinement, the following criteria must be met.

(1) (No change.)

(2) The animal has been vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the manufacturer [label] recommendations for the vaccine. If an unvaccinated animal is not over 16 weeks [four months] of age at the time of the potential exposure [bite], it may be allowed home confinement [quarantine].

(3) The local rabies control authority or a [licensed] veterinarian must observe the animal at least on the first and last days of the home confinement [quarantine period].

(4) The animal was not a stray [(]as defined in the Texas Health and Safety Code, §826.002[)], at the time of the potential exposure [bite].

(b) A domestic animal which has potentially exposed a human and has been designated by the local rabies control authority as unowned may be humanely killed. A suitable specimen shall be submitted for rabies testing as specified in subsection (h) of this section. [A domestic animal which has bitten a human and has been designated by the local rabies control authority as unclaimed may be humanely killed in such a manner that the brain is not mutilated. A suitable specimen (head with brain intact or brain) shall be submitted to a department certified laboratory for rabies diagnosis as specified in subsection (h) of this section.]

(c) If the animal implicated in the potential exposure [biting animal] is a high-risk animal, it shall be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(d) If the [biting] animal implicated in the potential exposure is a low-risk animal, neither quarantine nor rabies testing will be required unless the local rabies control authority has cause to believe the [biting] animal is rabid, in which case it shall [should] be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(e) (No change.)

(f) If the [biting] animal implicated in the potential exposure is not included in subsection (a), (b), (c), (d), or (e) of this section, the [biting] animal will be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section or the local rabies control authority may require the animal to be quarantined at a department-licensed quarantine facility or a veterinary clinic, or confined elsewhere as deemed appropriate by the local rabies control authority [or suitably confined] for the 30-day observation period as an alternative [alternate method] to killing and testing. If the potential rabies exposure occurs in a city or county other than where the animal's custodian resides, the animal may be transferred to a department-licensed quarantine facility or a veterinary clinic in the city or county of the custodian's residence or allowed confinement deemed appropriate if there is mutual agreement to do so between the local rabies control authorities for the city or county where the exposure occurred and where the custodian resides.

(g) Any animal required to be quarantined under this section, which cannot be maintained in [a] secure quarantine, shall be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(h) All laboratory specimens referred to in subsections (a) - (g) [(b) - (g)] of this section shall be submitted in accordance with §169.33 of this title (relating to Submission of Specimens for Laboratory Examination).

(i) At the discretion of the local rabies control authority, [currently vaccinated] assistance animals[, therapy, and police dogs] may not be required to be placed in quarantine (to include confinement) during the observation period.

(j) Police service animals are exempted from quarantine per the Texas Health and Safety Code, §826.048, including confinement.

(k) Animals should not be vaccinated against rabies during the observation period; however, animals may be treated for unrelated medical problems diagnosed by a veterinarian. If the animal becomes ill during the observation period, the local rabies control authority must be notified by the person having possession of the animal.

§169.28. Requirements of a Quarantine Facility.

(a) Quarantine procedures.

(1) A quarantine facility [Quarantine facilities] shall have and use written standard operating procedures (SOP) specific for that facility to ensure effective and safe quarantine procedures. The SOP shall be posted in the quarantine facility, or otherwise be readily available to all employees in the quarantine facility, and adhered to by each employee.

(2) An animal being quarantined because it [which] may have exposed a human to rabies [and animals suspected of rabies that are placed in quarantine for observation] must be maintained in a primary enclosure, separated from all other animals by a solid partition [from all other animals in such a manner] so that there is no possibility of physical contact between animals. An empty chamber between animals is not an acceptable alternative. To prevent rabies transmission, handling of rabies-suspect animals shall be minimized and carried out in a manner that avoids physical contact of other animals and people with the saliva of quarantined animals. Individuals handling animals suspected of shedding rabies virus should utilize appropriate personal protective equipment. To prevent escape, the primary enclosure [chamber] must be enclosed on all sides, including the top. Quarantine cages, runs, or rooms must have "Rabies Quarantine" signs posted.

[(3) Unowned animals may be destroyed for rabies diagnosis prior to the end of the quarantine period.]

(b) Facilities planning. Any entity [county, city, town, or incorporated community] desiring to construct a [animal] quarantine fa-

cility [facilities] shall submit plans to the department for review prior to beginning construction [approval].

(c) Inspection requirements of quarantine facilities.

(1) It will be the responsibility of the department to inspect all [animal] quarantine facilities, including those operated by government contractors. The inspection of the premises will be accomplished during ordinary business hours. All deficiencies will be documented in writing. Those that are of sufficient significance to affect the humane care or security of any animal housed within [confined to] the facility must be corrected within a reasonable period of time.

(2) (No change.)

(3) The quarantine facility manager has the right to appeal the results of the inspection [evaluation]. If the opinion of management of the quarantine facility is in conflict with the inspection [evaluation], he or she may request a review of the inspection by the manager [director] of the department's Zoonosis Control Branch. [Zoonosis Control Division. In the event points of difference still remain, the supervisor may request a review of the inspection by the chief of the department's Bureau of Communicable Disease Control.] The appeal [Each of the appeals] listed in this paragraph [, when required,] will be made in writing through the regional director's office of the health service [public health] region in which the quarantine [animal] facility is located.

§169.29. Vaccination Requirement.

(a) The [owner or] custodian (excluding animal shelters as defined in the Texas Health and Safety Code, §823.001) of each [domestic] dog or cat shall have the animal vaccinated against rabies by 16 weeks [four months] of age. The animal must be vaccinated by or under the direct supervision of a veterinarian with rabies vaccine licensed by the United States Department of Agriculture for that animal species at or after the minimum age requirement and using the recommended route of administration for the vaccine. The attending veterinarian has discretion as to when the subsequent vaccination will be scheduled as long as the revaccination due date does not exceed the recommended interval for booster vaccination as established by the manufacturer or vaccination requirements instituted by local ordinance. The custodian shall retain each vaccination certificate until the animal receives a subsequent booster. [The animal must receive a booster within the 12-month interval following the initial vaccination. Every domestic dog or cat must be revaccinated against rabies at a minimum of at least once every three years with a rabies vaccine licensed by the United States Department of Agriculture. The vaccine must be administered according to label recommendations.] Livestock (especially those that have frequent contact with humans), domestic ferrets, and wolf-dog hybrids should be vaccinated against rabies. The administration of a rabies vaccine in a species for which no licensed vaccine is available is at the discretion of the veterinarian; however, an animal receiving a rabies vaccine under these conditions will not be considered to be vaccinated against rabies virus in potential rabies exposure situations. [Nothing in this section prohibits a veterinarian and owner or custodian from selecting a more frequent rabies vaccination interval. Health and Safety Code, §§826.014 and 826.015 allow local jurisdictions to establish more frequent rabies vaccination intervals.]

(b) An official [Official] rabies vaccination certificate [certificates] shall be issued for each animal by the [vaccinating] veterinarian responsible for administration of the vaccine and contain the following information:

(1) custodian's [owner's] name, address, and telephone number;

(2) - (4) (No change.)

(5) revaccination due date [date vaccination expires (revaccination due date)];

(6) (No change.)

(7) veterinarian's signature, [or] signature stamp, or computerized signature, plus address, phone number, and license number.

(c) Each veterinarian who issues a rabies vaccination certificate, or the veterinary practice where the certificate was issued, shall retain a readily retrievable copy of the certificate [A copy of each rabies vaccination certificate issued shall be retained by the issuing veterinarian and be readily retrievable] for a period of not less than two years after the revaccination due date [five years from the date of issuance].

(d) (No change.)

§169.30. Disposition of Domestic Animals Exposed to Rabies.

(a) Not currently vaccinated animals which have been bitten by, directly exposed by physical contact with, or directly exposed to the fresh tissues of a high-risk animal that is either unavailable for testing or for which a negative test cannot be confirmed or a rabid animal [or directly exposed by physical contact with a rabid animal or its fresh tissues] shall be:

(1) (No change.)

(2) [if sufficient justification for preserving the animal exists, the exposed animal shall be] immediately vaccinated against rabies, placed in confinement [strict isolation] for 90 days, and given booster vaccinations during the third and eighth weeks of confinement [isolation]. For young animals, additional vaccinations may be necessary to ensure that the animal receives at least two vaccinations at or after the age prescribed by the United States Department of Agriculture (USDA) for the vaccine administered.

(b) Currently vaccinated animals which have been bitten by, directly exposed by physical contact with, or directly exposed to the fresh tissues of a high-risk animal that is either unavailable for testing or for which a negative test cannot be confirmed or a rabid animal [or otherwise significantly exposed to a rabid animal] shall be:

(1) (No change.)

(2) immediately [if sufficient justification for preserving the animal exists, the exposed vaccinated animal shall be] given a booster rabies vaccination [immediately] and placed in confinement [strict isolation] for 45 days.

(c) These provisions apply only to domestic animals for which a USDA-licensed [an approved] rabies vaccine is available.

(d) In situations where none of the requirements of this section are applicable, the recommendations contained in the latest edition of the publication titled The Compendium of Animal Rabies Control, published by the National Association of State Public Health Veterinarians, should be followed. The administration of a rabies vaccine in a species for which no licensed vaccine is available is at the discretion of the veterinarian; however, an animal receiving a rabies vaccine under these conditions will not be considered to be vaccinated against rabies virus in potential rabies exposure situations.

§169.31. Interstate Movement of Dogs and Cats into Texas.

Each dog and cat 12 weeks [over three months] of age or older to be transported into Texas for any purpose shall be admitted only when vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the manufacturer [label] recommendations for the vaccine. If an initial vaccination was administered less than 30 days prior to arrival, the custodian should confine the dog or cat for the balance of the 30 days. Additionally, documentation [identification] must be provided by a vaccination certificate showing the date

of vaccination, vaccine used, and signature of the [licensed] veterinarian responsible for administration of the vaccine [who administered the vaccine]. If the dog or cat is less than 12 weeks of age, the custodian should confine the animal until 30 days subsequent to its initial vaccination.

§169.32. International Movement of Dogs and Cats into Texas.

The federal government regulates the entry of pets into the United States; requirements set forth in this section are in addition to meeting federal requirements. Each dog and cat 12 weeks [over three months] of age or older to be transported into Texas for any purpose shall be admitted only when vaccinated against rabies and the time elapsed since the most recent vaccination has not exceeded the manufacturer [label] recommendations for the vaccine. If an initial vaccination was administered less than 30 days prior to arrival in the United States, the custodian must confine the dog or cat for the balance of the 30 days. Additionally, documentation [identification] must be provided by a vaccination certificate showing the date of vaccination, vaccine used, and signature of the veterinarian responsible for administration of the vaccine [who administered the vaccine]. Any dog or cat that has received a rabies vaccine not licensed by the United State Department of Agriculture or has been vaccinated under the authority of a veterinarian who was not licensed to practice veterinary medicine in the United States may be admitted but must be vaccinated according to Texas requirements within 30 days after entering Texas. If the dog or cat is less than 12 weeks of age, the custodian must confine the animal until 30 days subsequent to its initial vaccination. [International movement of dogs and cats into Texas will also include any rules and regulations prescribed by the United States government.]

§169.33. Submission of Specimens for Laboratory Examination.

Preparation of specimens either for shipment or for personal delivery for rabies diagnosis shall include the following.

(1) (No change.)

(2) The head of the suspect animal shall be separated from the body by a qualified person as soon as possible [immediately] after the death of the animal [by a qualified person]. Only the head shall be submitted with the exception that whole bats and small rodents may be submitted. If only the brain is submitted rather than the entire head, the minimum tissue requirements for rabies testing are a complete transverse cross section of the brain stem and tissue from one of the following: cerebellum or hippocampus [parts of the cerebellum, hippocampus, and brain stem must be included]. Submissions that do not meet these tissue requirements [Specimens which do not include at least two of these three areas of the brain] will be considered unsatisfactory due to a lack of sufficient material.

(3) The specimen [head] shall be immediately chilled to between 32 [45] degrees Fahrenheit and 45 [32] degrees Fahrenheit either in a refrigerator or by packing for shipping with sufficient amounts of refrigerants in the container; the specimen [.The head] should not be frozen. When shipping, sufficient refrigerant shall be added so the specimen will remain chilled for a minimum of 48 hours. Do not use dry ice. Gel packs or similar refrigerants are recommended. Ice is not recommended.

(4) If specimens are shipped, containment in compliance with requirements in the Code of Federal Regulations (CFR), Title 49, [two containers] shall be used for packing. Packing methods shall prevent leakage and provide for proper identification (such as an identification number) of the specimen.

[(A) The immediate (inner) container. Only one head shall be placed in each immediate container which shall be double plastic bags. Attach the owner's name or an identification number to each double-sealed plastic bag. Adhesive tape is useful. Do not use masking tape.]

[(B) The shipping (outer) container.]

[(i) The immediate container(s) shall be placed in an insulated shipping container of adequate strength to withstand shipping conditions, such as a styrofoam container inside a cardboard box.]

[(ii) Sufficient refrigerant shall be added so the head will remain chilled for a minimum of 48 hours. Do not use dry ice. Gel packs or similar refrigerants are recommended. Ice is not recommended but, if used, must be doubled-bagged in heavy-duty plastic bags.]

[(iii) Packing material, such as newspaper, shall be added to absorb water and blood in the event of leakage and buffer the specimens.]

(5) [(iv)] A completed department [Texas Department of Health] Form G-9, Rabies Submission Form, which is available at the department's Laboratory Services Section, Department of State Health Services [Bureau of Laboratories, Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756, is required for each specimen [head] submitted to the department's Laboratory Services Section. Each form must contain the same identification information provided with the specimen [as located on the specimen bag] as stated in paragraph (4) of this section [subparagraph (A) of this paragraph]. Submission form(s) shall be contained [placed] in a water-proof bag [on top of the Styrofoam container inside the cardboard box. If a combination of a Styrofoam container and cardboard box is not used, the form(s) shall be placed on top of the packing material inside the outer container].

(6) [(v)] Labeling on the outside of the shipping container shall be legible and include:

(A) [(I)] name, address, and telephone number of the [appropriate] laboratory [(listed in paragraph (6) of this section)];

(B) [(II)] name, [the] return address, [name,] and telephone number of the shipper; [and]

(C) language in compliance with requirements in the CFR, Title 49, pertaining to the shipment of infectious substances for diagnostic purposes; and

(D) [(III)] the following information [statement]: "RABIES IDENTIFICATION TEAM, LABORATORY SERVICES SECTION - REFRIGERATE ON ARRIVAL." ["RABIES SUSPECT - REFRIGERATE ON ARRIVAL."]

(7) [(5)] The following procedures are required for shipment:

(A) shipment shall be by bus or other reliable carrier; the department does not recommend the United States Postal Service. If an overnight carrier is used, such as United Parcel Service (UPS) or Federal Express, ship the specimen such that it will arrive by Friday or delay shipment until Monday. These services do not deliver to the department on the weekend;

(B) a shipping receipt will be obtained and retained by the shipper;

(C) at the time of the shipment, the shipper shall telephone the [appropriate] laboratory and notify laboratory personnel of the shipment; and

(D) the shipper shall provide the return postage (in the form of stamps, not money) if return of the shipping container is desired.

(8) Paragraphs (5) and (6) of this section apply to specimens submitted to the department's Laboratory Services Section. The appropriate form, labeling instructions, and shipping requirements for another department-designated laboratory can be obtained by contacting that laboratory; a list of these laboratories with their contact information will be maintained on the department's website.

[(6) The certified laboratories in Texas are:]

[(A) Austin - Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone the rabies shipment notification hotline at 1-800-252-8163, or the local telephone at: (512) 458-7595, (512) 458-7515, or (512) 458-7491.]

[(B) El Paso - Laboratory, El Paso City-County Health Department, 222 South Campbell, El Paso, Texas 79901, telephone: (915) 543-3536;]

[(C) Houston - Bureau of Laboratory Services, City of Houston Health Department, 1115 South Braeswood, Houston, Texas 77030, telephone: (713) 558-3468 or (713) 558-3467;]

[(D) San Antonio - Laboratory, San Antonio Metropolitan Health District, 332 West Commerce Street, Room 203, San Antonio, Texas 78205, telephone: (210) 207-8884.]

§169.34. Statewide Quarantine.

(a) Declaration. The Executive Commissioner of the Health and Human Services Commission (HHSC) [board] declares a statewide rabies quarantine.

(1) - (2) (No change.)

(3) Animals subject to the statewide rabies quarantine include any live species of foxes indigenous to North America, coyote (*Canis latrans*) [(Canis latrans)], or raccoon (*Procyon lotor*) [(Procyon lotor), or species of foxes indigenous to North America].

(4) Transport exceptions. Animals subject to the statewide rabies quarantine may be transported by peace officers and individuals hired or contracted by local, state, or federal government agencies [state or federal agencies or local governments] to deal with stray animals when such transport is a part of their official duty. These animals may also be transported by employees of zoos or other institutions accredited by the American Association of Zoological Parks and Aquariums when such transport is part of their official duty. If an exempt individual transports such animals for release, the animals must be released within a ten-mile radius or within ten miles of the city limits of where they were originally captured.

(b) Executive Commissioner of the HHSC's [Board's] designee. The Executive Commissioner of the HHSC's [board's] designee is the commissioner of the Department of State Health Services, whom the Executive Commissioner of the HHSC [board] appoints to act as his or her [its] designee as described in the Texas Health and Safety Code, §826.045.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200703752

Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 7. DIVISION OF EMERGENCY MANAGEMENT

SUBCHAPTER A. EMERGENCY MANAGEMENT PROGRAM REQUIREMENTS

37 TAC §§7.1 - 7.3

The Texas Department of Public Safety proposes amendments to Chapter 7, Subchapter A, §§7.1 - 7.3, concerning Emergency Management Program Requirements.

Amendment to §7.1 is necessary in order to change the title of the section to better clarify the subject of the rule.

Amendment to §7.2 is necessary in order to add language from Texas Government Code, Chapter 418 outlining the role of emergency management coordinators.

Amendment to §7.3 is necessary in order to explain the preferred method for jurisdictions to notify EMD about its emergency management program and the officials responsible for the program.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Russ Lecklider, State Coordinator for Administration, Emergency Management Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0220, (512) 424-2437.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

Texas Government Code, §§411.004(3), 418.024, and 418.042 are affected by this proposal.

§7.1. Emergency Management Organization Required.

Each county and incorporated city in Texas shall maintain an emergency management agency or participate in a local or interjurisdictional emergency management agency.

§7.2. Responsibilities of the Chief Elected Official.

The mayor of each municipal corporation and the county judge of each county are designated as the emergency management director for their respective jurisdictions. The mayor and county judge may each designate an emergency management coordinator who shall serve as an assistant to the presiding officer of the political subdivision for emergency management purposes when so designated.

§7.3. Notification Required.

The presiding officer of each political subdivision of the state shall notify the Governor's Division of Emergency Management of the manner in which the political subdivision is providing or securing an emergency management program and the person designated to head that program. Notification should be made using form DEM-147 (Emergency Management Director/Coordinator Appointment), which is available from the division's web site (http://www.txdps.state.tx.us/dem/pages/index.htm) and from its Regional Liaison Officers stationed around the State.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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SUBCHAPTER B. EMERGENCY MANAGEMENT PLANNING AND PREPLANNING REQUIREMENTS

37 TAC §§7.11 - 7.13

The Texas Department of Public Safety proposes amendments to Chapter 7, Subchapter B, §§7.11 - 7.13, concerning Emergency Management Planning And Preplanning Requirements.

Amendment to §7.11 is necessary in order to provide information on the easiest method for reviewing a copy of the state emergency management plan.

Amendment to §7.12 is necessary in order to indicate that there are state standards for both the content and currency of local emergency management plans.

Amendments to §7.13 are necessary in order to reformat the section to add provisions for interjurisdictional emergency management programs authorized by Chapter 418 of the Government Code, to provide more detailed information on planning requirements, to add NIMS compliance required by the Department of Homeland Security for virtually all grants, and to update the description of documents required for grants.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Russ Lecklider, State Coordinator for Administration, Emergency Management Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0220, (512) 424-2437.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

Texas Government Code, §§411.004(3), 418.024, and 418.042 are affected by this proposal.

§7.11. State Plan Required.

The Division of Emergency Management of the Texas Department of Public Safety shall prepare and maintain a state emergency management plan. This plan is on file at the division's office, 5805 North Lamar, Austin, Texas, and with each member agency of the Emergency Management Council. A copy of the plan is posted on the division's web site (http://www.txdps.state.tx.us/dem/pages/index.htm).

§7.12. Local Planning Required.

Each local and interjurisdictional emergency management agency shall prepare, keep current, and distribute to appropriate officials a local or interjurisdictional emergency management plan that includes the minimum content specified by the Division of Emergency Management in its local emergency planning standards and has been signed by the presiding officer(s) of the jurisdiction(s) for which it was prepared. Local and interjurisdictional plans shall be reviewed annually and must have been prepared or updated during the last five (5) years to be considered current. A copy of each plan and any changes to it will be provided to the Division [~~of Emergency Management~~].

§7.13. Eligibility for Federal Incentive Programs Described.

(a) The [~~Governor's~~] Division of Emergency Management administers certain federal assistance programs authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act as amended, and other statutes. To participate in these programs, a city or county must meet, as a minimum, the following basic eligibility requirements:

(1) Have a local emergency management agency legally established by city ordinance or commissioner's court order or participate in an interjurisdictional emergency agency established by joint resolution of the participating local government.

(2) Have a local or interjurisdictional emergency management plan that meets state planning standards for minimum content and is current [~~The emergency management coordinator must be designated and appointment reported to the division~~].

(3) Have formally adopted and be implementing the National Incident Management System (NIMS) as its incident management system [~~Have an approved emergency management plan, or submit an acceptable schedule for preparation and submission of such plan~~].

(4) Submit an acceptable project narrative or work plan and budget for eligible activities [~~Submit an approvable work plan which outlines proposed emergency management activities for the current fiscal year~~].

(b) Many grants have more specific eligibility requirements and additional terms and conditions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. EMERGENCY MANAGEMENT OPERATIONS

37 TAC §§7.21, 7.23, 7.24, 7.26, 7.27

The Texas Department of Public Safety proposes amendments to Chapter 7, Subchapter C, §§7.21, 7.24, 7.26, 7.27, and new §7.23 concerning Emergency Management Operations.

Amendment to §7.21 is necessary in order to change the title of the section. Further amendments to the section are necessary in order to explain the purpose of a disaster declaration.

Amendment to §7.24 is necessary in order to indicate who a local official should call for help.

Amendment to §7.26 is necessary in order to clarify the responsibilities during multi-agency response operations.

Amendment to §7.27 is necessary in order to add the mandatory evacuation authority given to mayors and county judges during the 79th Legislative Session.

New §7.23 is filed simultaneously with the repeal of current §7.23 and is necessary in order to add the requirement to call on resources available through mutual aid and the requirement in Chapter 418 of the Government Code that cities request assistance from their county before requesting state assistance.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Russ Lecklider, State Coordinator for Administration, Emergency Management Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0220, (512) 424-2437.

The amendments and new section are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

Texas Government Code, §§411.004(3), 418.024, and 418.042 are affected by this proposal.

§7.21. Declaration of a State of Disaster and Effects of a Declaration [~~Declared~~].

The presiding officer of a political subdivision may declare a local State of Disaster if a disaster has occurred or is imminent. A disaster declaration activates the response provisions of the local emergency plan, if that has not been previously accomplished, and also activates recovery provisions of the plan [~~A local disaster may be declared by the presiding officer of a political subdivision~~]. Such a declaration can be sustained for a maximum of seven days, unless extended by the governing body of the political subdivision.

§7.23. Local Government's Responsibility.

In responding to emergencies and disasters, a local government is expected to use its own resources and the resources available to it through mutual aid agreements before requesting assistance from the state. Municipalities must request assistance from their county before requesting assistance from the state.

§7.24. Requesting State Assistance.

If local and mutual aid resources prove inadequate for coping with a disaster, the local government may request assistance from the state by contacting the local Disaster District Committee Chairperson, who is the commanding officer of the Texas Highway Patrol district or subdistrict in which the jurisdiction is located [~~state official designated in the Texas Emergency Management Plan as amended or revised~~].

§7.26. Local Government Control Affirmed.

All local disaster operations will be directed by officials of local government. Organized state and federal response teams and teams from other local governments and response organizations providing mutual aid will normally work under their existing supervisors, who will take their mission assignments from the local incident commander.

§7.27. Protective Action Recommendations for the Public.

The decision to recommend that the public take shelter, evacuate, or relocate rests solely with the Governor and with the officials of local government. The chief elected official of a local government has the legal authority to order the evacuation of areas within the government's jurisdiction that are at risk from or have been impacted by a disaster.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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37 TAC §§7.23, 7.28, 7.29

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of Chapter 7, Subchapter C, §§7.23, 7.28 and 7.29, concerning Emergency Management Operations.

Repeal of §7.23 is necessary in order to simultaneously file a new §7.23 which adds the requirement to call on resources available through mutual aid and the requirement in Chapter 418 that cities request assistance from their county before requesting state assistance.

Repeal of §7.28 is necessary as there is no legal authority for this rule.

Repeal of §7.29 is necessary as these powers are addressed in §7.21 of this title (relating to Declaration of a State of Disaster and Effects of a Declaration).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Russ Lecklider, State Coordinator for Administration, Emergency Management Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0220, (512) 424-2437.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

Texas Government Code, §§411.004(3), 418.024, and 418.042 are affected by this proposal.

§7.23. Local Government's Responsibility.

§7.28. Responsibility for Evacuees Assigned.

§7.29. Emergency Powers Referenced.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. RECOVERY AND REHABILITATION REQUIREMENTS

37 TAC §§7.41 - 7.45

The Texas Department of Public Safety proposes amendments to Chapter 7, Subchapter D, §7.41, §7.42 and new §§7.43 - 7.45, concerning Recovery And Rehabilitation Requirements.

Amendment to §7.41 is necessary in order to change the title of the title. Further amendments are necessary in order to require the chief elected official of the jurisdiction to have declared a local State of Disaster before requesting disaster recovery assistance.

Amendments to §7.42 are necessary in order to combine the procedures for requesting recovery assistance with the existing text of current §7.44, which is being simultaneously repealed.

New §7.43 is necessary in order to describe the specific materials that should accompany a request for assistance and or state disaster declaration and where to get them. New §7.43 is filed simultaneously with the repeal of current §7.43.

New §7.44 is necessary in order to explain what happens after a request for assistance or state disaster declaration has been submitted to the state. New §7.44 is filed simultaneously with the repeal of current §7.44.

New §7.45 is necessary in order to explain what eventually happens after local governments request assistance from the state.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Russ Lecklider, State Coordinator for Administration, Emergency Management Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0220, (512) 424-2437.

The amendments and new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

Texas Government Code, §§411.004(3), 418.024, and 418.042 are affected by this proposal.

§7.41. Initiation of Requests for Recovery Assistance [~~Local Initiation Required~~].

Requests for state or federal recovery assistance must be initiated by local government. The chief elected official of the jurisdiction must have declared a local State of Disaster before requesting disaster recovery assistance.

§7.42. Written Request Required.

Requests for recovery assistance and/or a state [~~or a gubernatorial~~] disaster declaration by the Governor must be made by the local chief elected official in writing [~~by the local chief elected official~~] to the Governor of Texas through the Division of Emergency Management. The request must indicate that the disaster is of such magnitude that local resources are inadequate to deal with it and the affected locality cannot recover without state and/or federal assistance. Request should be transmitted to the Division by facsimile or courier [~~include a local state of disaster~~].

§7.43. Supporting Information for a Request for Assistance.

The following should be attached to requests for assistance and/or for a state disaster declaration by the Governor.

(1) An estimate of the extent of damage sustained to public and private property, including homes and business and data on the number of people who are deceased, injured, or displaced. The Damage Summary Outline (form DEM-93), available from the Division of Emergency Management field staff and posted on the division's web site (http://www.txdps.state.tx.us/dem/pages/index/htm), should be used for this purpose.

(2) A copy of the local disaster declaration issued for the disaster.

§7.44. Joint Damage Assessments.

When a local government has requested state or federal disaster recovery assistance and/or a state disaster declaration, state and, where appropriate, federal emergency management officials will normally deploy to the affected area to conduct a joint damage assessment with local officials that will be used in developing state and federal disaster recovery program recommendations. Local governments are expected to make available personnel who are knowledgeable about the damages suffered by the community to participate in this effort.

§7.45. State and Federal Disaster or Emergency Declarations.

(a) After consultation with appropriate emergency management officials, the Governor may issue a state disaster declaration for a local, regional, or statewide emergency situation.

(b) The Governor may also request a federal major disaster or emergency declaration for the emergency situation, which would, if approved, activate certain federal disaster relief and recovery programs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703657
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 424-2135

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37 TAC §7.43, §7.44

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of Chapter 7, Subchapter D, §7.43 and §7.44, concerning Recovery And Rehabilitation Requirements.

The repeal of §7.43 is necessary in order to simultaneously propose a new §7.43 which describes the specific materials that should accompany a request for assistance and or state disaster declaration and where to get them.

Because the text of current §7.44 has been incorporated into §7.42, repeal of §7.44 is necessary in order to simultaneously file a new §7.44 explaining what happens after a request for assistance or state disaster declaration has been submitted to the state.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeals are in effect the public benefit anticipated as a result of enforcing the repeal will be rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Russ Lecklider, State Coordinator for Administration, Emergency Management Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0220, (512) 424-2437.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §418.024, and §418.042.

Texas Government Code, §§411.004(3), 418.024, and 418.042 are affected by this proposal.

§7.43. Information Needed.

§7.44. Magnitude Described.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703658
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: September 30, 2007
For further information, please call: (512) 424-2135

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 70. COST OF COPIES OF PUBLIC INFORMATION

1 TAC §70.12

The Office of the Attorney General (the "OAG") adopts new rule 1 TAC §70.12, relating to a governmental body's charges for locating, compiling, and producing public information under Chapter 552 of the Texas Government Code (The Public Information Act). This new rule is adopted without changes to the proposed text as published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4313) and will not be republished.

New §70.12(a) establishes that the amount of a charge allowable under §552.275 of the Texas Government Code shall be calculated using existing §70.3(c) - (e). New §70.12(b) prohibits a governmental body from including time spent on certain tasks when determining a charge under §552.275.

No comments were received regarding the adoption of the new rule.

New §70.12 is adopted pursuant to the rulemaking authority granted to the OAG under Texas Government Code §552.262 and §552.275.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703663
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Effective date: September 5, 2007
Proposal publication date: July 13, 2007
For information on this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 10. SEED CERTIFICATION STANDARDS

SUBCHAPTER A. GENERAL REQUIREMENTS

4 TAC §10.11

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) adopt new §10.11, concerning additional requirements for bulk seed sales, without changes to the proposal published in July 6, 2007, issue of the *Texas Register* (32 TexReg 4164). The new section is adopted to update the sale of bulk seed for certification. New §10.11 also clarifies the standards for genetic seed certification. The department is the certifying agency in the administration of the Seed and Plant Certification Act and is charged with administering and enforcing the standards adopted by the State Seed and Plant Board.

No comments were received regarding adoption of the new rule.

The new section is adopted under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest and the Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules for administration of the code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703651
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 12, 2007
Proposal publication date: July 6, 2007
For further information, please call: (512) 463-4075

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CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER S. ASIAN CYCAD SCALE QUARANTINE

4 TAC §§19.200 - 19.203

The Texas Department of Agriculture (the department) adopts new §§19.200 - 19.203, concerning a quarantine for the Asian cycad scale, *Aulacaspsis yasumatsui* Takegi, without changes to the proposal published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4316). The quarantine is proposed to slow the spread of this pest in the State. The adopted new sections prescribe specific restrictions on the movement of quarantined articles. In Texas, the Asian cycad scales were intercepted in some cycad palms (cycads) imported from Florida during the last two years. These infestations were eliminated either by treating or destroying the infested cycads, the most common hosts of the Asian cycad scale. In September 2006, the Texas Cooperative Extension reported widespread occurrence of the Asian cycad scale in Cameron County, particularly near Harlingen, Texas. Later, the Cooperative Extension reported the presence of this pest from twelve additional Texas counties. A majority of cycads offered for sale in Texas are imported from Florida, whereas approximately five nurseries produce these cycads locally. The Asian cycad scales cause damage by sucking plant fluids. They cause necrosis of leaves and eventually plant death if left uncontrolled. Movement of infested cycads has been identified as the major pathway for the artificial spread of this pest. The department believes that placing restrictions on the movement of quarantined articles from the infested counties of Texas and other states will delay the spread of this pest into free areas of Texas.

Section 19.200 defines the quarantined pest. Section 19.201 lists the Asian cycad scale-infested counties in Texas and other states. Section 19.202 describes the quarantined articles, and §19.203 prescribes requirements for movement of the quarantined articles from the quarantined area to a free area. The department believes that it is necessary to take this action to reduce spread of the Asian cycad scale into free areas of Texas.

In accordance with the Texas Agriculture Code, §71.006, a public hearing was held in Austin, Texas, to take public comment on the proposed Asian cycad scale quarantine rules. The hearing was conducted by Dr. Shashank Nilakhe, State Entmologist. A report was issued after the hearing, in accordance with the requirements of §71.006 of the Texas Agriculture Code, finding that the proposed quarantine is necessary and should be adopted.

One comment on the proposal was provided by a representative of the Texas Nursery and Landscape Association (TNLA) at the public hearing. TNLA is concerned about the damage potential of the Asian cycad scale and is supportive of the quarantine, as proposed.

The new sections are adopted under the Texas Agriculture Code (the Code), §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703650
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: September 5, 2007
Proposal publication date: July 13, 2007
For further information, please call: (512) 463-4075

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PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 65. COMMERCIAL FERTILIZER RULES

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts the amendment of Title 4, Part 3, Subchapter A, §65.1 concerning Definitions, and a new section in Subchapter B, §65.6 concerning Distribution of Ammonium Nitrate or Ammonium Nitrate Material without changes to the proposed text as was published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4518) and will not be republished.

The changes to the Texas Commercial Fertilizer Rules are made to comply with H.B. 2546 that was passed during the 80th legislative session. In §63.154(b)(1) of this new bill, the Office of the Texas State Chemist is instructed to adopt rules allowing a person to refuse sale of ammonium nitrate and ammonium nitrate material. The adopted rules fulfill that requirement.

No comments were received regarding adoption of the amendment.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §65.1

The amendment to §65.1 is adopted under the Texas Agriculture Code 63, §63.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers and will go into effect September 9, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703750
Dr. Tim Herrman
State Chemist and Director, OTSC
Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist
Effective date: September 9, 2007
Proposal publication date: July 20, 2007
For further information, please call: (979) 845-1121

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SUBCHAPTER B. PERMITTING AND REGISTRATION

4 TAC §65.6

The new rule §65.6 is adopted under the Texas Agriculture Code 63, §63.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial fertilizers and will go into effect on September 9, 2007.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703753

Dr. Tim Herrman

State Chemist and Director, OTSC

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: September 9, 2007

Proposal publication date: July 20, 2007

For further information, please call: (979) 845-1121

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TITLE 7. BANKING AND SECURITIES

PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 12. LOANS AND INVESTMENTS

The Finance Commission of Texas (commission) adopts amendments to §12.1, concerning purpose and scope; §12.3, concerning loans and extensions of credit; §12.5, concerning percentage lending limits; §12.6, concerning loans not subject to lending limits; §12.8, concerning other exceptions; §12.9, concerning aggregation and attribution; §12.10, concerning nonconforming loans; §12.33, concerning debt cancellation contracts and debt suspension agreements; and §12.91, concerning other real estate owned; the repeal of §12.2, concerning general definitions; §12.61, concerning transition provisions; and §12.62, concerning definition of equity capital; and new §12.2, concerning definitions; §12.11, concerning calculation of lending limits; §12.61, concerning calculation of investment limits; and §12.62, concerning hedging investments. The amendments, repeal and new sections are adopted without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3919). The text will not be republished.

The adopted revisions implement certain provisions of House Bill 2007, passed by the 80th Texas Legislature. Most notably, House Bill 2007 deletes the concept of "certified surplus" in state law to create uniformity with federal standards and reduce regulatory burden. Effective September 1, 2007, state bank loan and investment limits will be calculated based on "unimpaired capital and surplus" instead of "capital and certified surplus." Under the revised law and the adopted amendments to Chapter 12, in most circumstances a bank will be able to calculate legal and investment limits quarterly, based on the quarterly calculation of capital contained in its call report.

Other adopted revisions relate to modernization and clarification as a result of a completed rule review, as periodically required by the Government Code, §2001.039.

Chapter 12, Subchapter A (§§12.1 - 12.11), implements Finance Code, §34.201, by providing detailed standards for calculating and applying a bank's legal lending limit.

The amendment to §12.1(b)(1) deletes as unnecessary the "grandfather" provision for bank investments currently held that were acquired prior to September 1, 1995.

Citations to federal law in §12.1(b)(1) and (2) are conformed to a standard format. Similarly, citations to federal law in §§12.3(b)(4), 12.5(d)(2), 12.6(b), and 12.91(b)(5) are amended to conform to the standard format.

Existing §12.2, concerning definitions, is repealed and replaced by new §12.2. As adopted, new §12.2(1) defines "unimpaired capital and surplus" as equivalent to Tier 1 capital, determined under federal risk-based capital standards. New §12.2 also defines "call report," "federal risk-based capital standards," "Tier 1 capital," and "control." Finally, the two definitions formerly in repealed §12.2 are included in new §12.2 without material change.

Because references to capital and certified surplus in Chapter 12 are obsolete, amendments to §§12.5(a), (b)(1), (c)(1), (d)(1), (e)(1), (f), 12.8(b), 12.9(e), and 12.10(a)(1) substitute "Tier 1 capital" in place of "capital and certified surplus" as the applicable measurement base.

Section 12.3 defines loans and extensions of credit. As amended, §12.3(a)(1) clarifies that intra-day overdrafts are not considered loans or extensions of credit.

Section 12.3(b)(2) formerly provided that accrued and discounted interest are not considered loans and extensions of credit. As amended, §12.3(b)(2) adds exclusions for interest that has been capitalized from prior notes and interest that has been advanced under a loan agreement, consistent with similar federal law that applies to national banks.

Section 12.6 implements certain exemptions for which no statutory limits apply. Under §12.6(c), a loan to state or local government is excluded from the lending limit to the extent the loan constitutes a legally created general obligation, if the bank obtains an opinion of counsel that the loan is a valid and enforceable general obligation. Similarly, under §12.6(f), a loan is excluded from the lending limit to the extent it is secured by an unconditional takeout commitment, insurance, or guarantee of a governmental entity, if the bank obtains an opinion of counsel that the unconditional takeout commitment, insurance, or guarantee is a valid and enforceable general obligation of the purchasing, insuring, or guaranteeing entity. The requirement in these two exemptions for an opinion of counsel is not statutorily required.

Accordingly, adopted amendments to §12.6(c) and (f) allow a bank to rely on a bond counsel letter of the attorney general with respect to the validity and enforceability of the obligation, extension of credit, or guarantee in question, in lieu of obtaining its own opinion of counsel. Obtaining an opinion of counsel can be expensive and time consuming for community banks. Pursuant to Government Code, Chapter 1202, the attorney general reviews and approves all bonds and similar obligations issued by state agencies, cities, counties, school districts, municipal utility districts, hospital districts, institutions of higher education and all other governmental entities or instrumentalities of the state, plus certain nonprofit corporations created to act on behalf of political subdivisions. Allowing community banks to rely upon the attorney general's bond counsel letters will significantly reduce regulatory burden.

Former §12.6(f) provided that protection against loss is not materially diminished or impaired by a procedural requirement, such as "an agreement to take over only in the event of default." As

amended, §12.6(f) clarifies that the phrase "an agreement to take over" means an agreement to pay on an obligation.

Under §12.9(c)(1), the common enterprise test for aggregation and attribution is stated in one instance as the existence of substantial financial interdependence between or among affiliated borrowers. Under §12.9(d), the independent source of repayment test for aggregation and attribution provides that an employer will not be considered a primary source of repayment solely because of wages and salaries paid to an employee. Because of confusion regarding whether wages and salaries paid to an owner-employee should be considered in determining whether substantial financial interdependence exists among the employer and the owner-employee for purposes of applying the common enterprise test, amended §12.9(d) clarifies that the common enterprise test and the source of repayment test are independent of one another.

Adopted new §12.11 provides direction concerning calculation of lending limits. Generally, a bank may rely on its quarterly calculation of capital found in its call report. However, to prevent a bank from lending in excess of a shrinking capital base, the section requires a bank to recalculate its lending limit between quarters if there were a change in its capital category for purposes of prompt corrective action under federal law. In addition, the banking commissioner may address unsafe or unsound lending practices or other supervisory concerns by directing any bank to calculate its lending limit more frequently than quarterly. The banking commissioner may also permit recalculation of lending limits during a quarter based on a material change in a bank's capital arising from corporate activities, such as a merger or stock issuance.

Section 12.33, concerning debt cancellation contracts and debt suspension agreements, is modeled on federal rules of the Office of the Comptroller of the Currency (OCC) addressing the same subject, for reasons expressed in the adoption preamble published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3494). However, shortly after adoption of §12.33, the OCC suspended certain aspects of its rules to consider how to address some difficulties that had arisen in the context of closed-end consumer loan transactions where debt cancellation contracts and debt suspension agreements are offered through unaffiliated, non-exclusive agents, see 68 Fed. Reg. 35283 (June 13, 2003). That suspension has never been lifted.

Accordingly, adopted §12.33(i) suspends specified aspects of §12.33 with respect to the offer and sale of debt cancellation contracts and debt suspension agreements through an unaffiliated, non-exclusive agent, in connection with closed-end consumer credit (other than residential mortgage loans) extended by the bank through the agent.

The submitted comment letter expressed support for adoption of proposed §12.33 without changes, but raised a concern regarding its interaction with other applicable law. Specifically, the commenter observed that the authorized fee for a debt cancellation contract or a debt suspension agreement cannot be added to a motor vehicle finance contract in Texas because it is not a permissible itemized charge under Chapter 348 of the Finance Code. The commenter expressed hope that others within Texas government might be encouraged into conforming their rules and statutes to allow state banks to add this charge to dealer financed contracts.

Existing §12.61 and §12.62 are repealed. The transition provisions set out in §12.61 are no longer necessary. The definition of equity capital set forth in §12.62 related to the law prior to House Bill 2007.

Adopted new §12.61 provides direction concerning calculation of investment limits. A state bank will determine its investment limit at the same time and in the same manner as it determines its lending limit under new §12.11.

Adopted new §12.62 addresses the permissibility of hedging investments, and authorizes a state bank to make an otherwise prohibited investment or exceed the statutory limits for an investment if the investment is solely for hedging existing bank risks and not for engaging in speculative activities.

Section 12.91, concerning other real estate owned (OREO), addresses the permissible means by which a bank acquires, manages, and disposes of OREO. Finance Code, §34.004, a new law enacted by House Bill 2007 effective September 1, 2007, may permit a state bank to retain ownership of nonworking royalty interests by classifying the interests as personal property instead of real property for bank regulatory purposes. Accordingly, §12.91(a)(10) is amended to remove royalty interests approved under Finance Code, §34.004, from the definition of OREO.

A state bank's ability to acquire and hold OREO is subject to 12 U.S.C. §1831a, which restricts and prohibits insured state banks and their subsidiaries from engaging in activities and investments that are not permissible for national banks and their subsidiaries, subject to exceptions. A national bank is required to treat a royalty interest as real estate and dispose of it no later than 10 years after acquisition. Accordingly, a state bank that seeks to retain direct ownership of royalty interests beyond 10 years after acquisition must apply to and obtain approval of both the banking commissioner under Finance Code, §34.004, and the Federal Deposit Insurance Corporation under 12 C.F.R. §362.3(a)(2)(i).

Finally, amended §12.91(h)(4) provides that permissible means of disposing of OREO include the transfer of OREO from the bank to a passive investment subsidiary in the manner authorized by 12 C.F.R. §362.4(b)(5)(i). State bank ownership of OREO beyond 10 years after acquisition is prohibited by 12 U.S.C. §1831a.

As required by Finance Code, §31.003(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development in this state.

The commission received one comment expressing support for the proposal.

SUBCHAPTER A. LENDING LIMITS

7 TAC §§12.1 - 12.3, 12.5, 12.6, 12.8 - 12.11

The amendments and new sections are adopted under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.201(d), which authorizes the commission to adopt rules regarding legal lending limits, including rules to define or further define terms used in the statute, or establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of loans or extensions of credit. The amendments and new

sections are also adopted under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703693
Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 475-1300

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7 TAC §12.2

The repeal of §12.2 is adopted under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.201(d), which authorizes the commission to adopt rules regarding legal lending limits, including rules to define or further define terms used in the statute, or establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of loans or extensions of credit. The repeal is also adopted under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703694
Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 475-1300

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SUBCHAPTER B. LOANS

7 TAC §12.33

The amendments are adopted under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Government Code, §2001.039, which requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon its rule review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703695
Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 475-1300

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SUBCHAPTER C. INVESTMENT LIMITS

7 TAC §12.61, §12.62

The repeal is adopted under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.101(h), which authorizes the commission to adopt rules regarding investments, including rules to define or further define terms used in the statute, to establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of securities, or to limit or expand investment authority for state banks for particular classes or categories of securities. The repeals are also adopted under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703696
Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 475-1300

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7 TAC §12.61, §12.62

The sections are adopted under Finance Code §31.003(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify applicable law, and under Finance Code, §34.101(h), which authorizes the commission to adopt rules regarding investments, including rules to define or further define terms used in the statute, to establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of securities, or to limit or expand investment authority for state banks for particular classes or categories of securities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703697

Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 475-1300

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SUBCHAPTER D. INVESTMENTS

7 TAC §12.91

The amendments are adopted under Finance Code, §31.003(a), which authorizes the commission to adopt rules to accomplish the purposes of Finance Code, Title 3, Subtitle A, including rules necessary or reasonable to implement and clarify applicable law, preserve or protect the safety and soundness of state banks, and grant at least the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state. The amendments are also adopted under the authority of Government Code, §2001.039, which requires a state agency to periodically review each of its rules and readopt, readopt with amendments, or repeal a rule based upon its rule review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703698
Sarah J. Shirley
General Counsel
Texas Department of Banking
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 475-1300

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PART 4. TEXAS DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 79. MISCELLANEOUS

SUBCHAPTER C. HOLDING COMPANIES

7 TAC §79.47

The Finance Commission of Texas ("Finance Commission") adopts an amendment to 7 TAC §79.47, Mutual Holding Companies to add a new subsection (e). The new subsection is adopted to clarify that a mutual holding company may own one or more intermediate subsidiary holding companies. The new subsection permits the organization of the subsidiary holding company either as part of the initial reorganization of a mutual savings bank as a mutual holding company or at any subsequent time subject to approval of the Department of Savings and Mortgage Lending (the "Department"). The amendment to the rule is adopted without changes to the proposed text as published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3926). The text of the rule will not be republished.

Finance Code Chapter 97, Subchapter B, provides that a mutual savings bank may organize a subsidiary stock savings bank and transfer the assets of the mutual savings bank to the new subsidiary, thus converting the existing entity into a mutual holding company. The result is a two-tiered structure with a mutual holding company parent (the first tier) and a subsidiary stock savings bank (the second tier). Frequently, however, savings banks may prefer to reorganize using a three-tiered structure. Under this structure the mutual holding company parent (first tier) may own as much as 100% but must own more than 50% of a stock subsidiary holding company (the second tier). The stock subsidiary holding company must own 100% percent of the stock savings bank (the third tier).

The Department believes that the use of a three-tiered structure is permitted under *Finance Code* Chapter 97 and current rules. However, the Department believes that amending 7 TAC §79.47 to more clearly set forth this position is advantageous because it provides better guidance as to permissible structures for those mutual savings banks considering reorganization as mutual holding companies. Because federally chartered mutual holding companies may use a three-tiered structure, the Department believes this furthers the goal of preserving parity with federal charters for state chartered savings banks.

The Department received no comments on the proposed rule.

The proposal is made pursuant to *Finance Code*§11.302(a) authorizes the Finance Commission to adopt rules applicable to savings associations and savings banks.

The sections of the *Finance Code* affected by the proposed new subsection are *Finance Code*, Chapter 97, Subchapter B, Mutual Holding Companies (*Finance Code* §§97.051 *et seq.*).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703746
John Fleming
General Counsel
Texas Department of Savings and Mortgage Lending
Effective date: September 9, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 475-1352

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.209

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §84.209, concerning Model Clauses for motor vehicle installment sales contracts. The amendments are adopted without changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3927) and will not be republished.

The purpose of the amendments to 7 TAC §84.209 is to correct errors in a Spanish translation of the documentary fee clause. The first translation option contained in §84.209(9)(B) has been revised to include the most accurate Spanish translation.

These amendments, as well as all of the rules contained in 7 TAC, Chapter 84, Subchapter B (§§84.201 - 84.210), provide model clauses and a model contract. Licensees are not required to adopt the model language contained in the rules. However, for those licensees utilizing the model clauses or contract, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter R) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §84.209 and §84.210 in the *Texas Register* on March 9, 2007 (32 TexReg 1231) listed the agency's implementation date as October 1, 2007. Given these additional amendments, the agency intends to provide licensees until January 1, 2008, for compliance.

The commission received no written comments on the proposal.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 348.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703677
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7640

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CHAPTER 88. CONSUMER DEBT MANAGEMENT SERVICES

SUBCHAPTER A. REGISTRATION PROCEDURES

7 TAC §88.102

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §88.102, concerning Filing of New Application for debt management services providers. The amendments are adopted with changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3928).

The purpose of these amendments is to establish a workable foundation to begin the regulation of for-profit entities that provide debt management services, including new filing requirements and clarification regarding information to be provided about accreditation organizations. Along with adopted amendments to 7 TAC §88.202 and §88.304, as well as adopted new 7 TAC §88.306 and §88.307 published elsewhere in this issue of the *Texas Register*, the adopted amendments serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature. With SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities.

Section 88.102(b) has been revised to reflect the new filing requirements contained in SB 884, including certain names, business addresses, email and website addresses of the applicant's debt management business. Language has been added to §88.102(b) to implement the new statutory requirement that each applicant provide the name and home address of each officer and director and each person holding 10% ownership or more. In the disclosure of principal parties, the detailed description of ownership and the disclosure of the for-profit affiliates have been limited to nonprofit or tax exempt organizations, as required by SB 884. Regarding accreditation organizations, paragraph (8) has been added, outlining the requirement that the applicant provide the name and contact information for the accreditation organizations for both the provider itself and its credit counselors.

Additionally, some technical corrections have been made to §88.102(b) to streamline its language for better clarity. Since the proposal, §88.102(b) has been revised further to enhance the streamlining process.

The commission received no written comments on the proposal.

These amendments are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to implement Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (amendments effective September 1, 2007) affected by the adopted amendments are or will be contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.102. Filing of New Application.

(a) An application for issuance of a new debt management services provider registration must be submitted as prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. Applications may be submitted electronically by Internet or e-mail, or by mail.

(b) The application shall include the following required forms and filings. All questions must be answered.

(1) Application for Registration of Debt Management Services Provider.

(A) Required names and addresses. An applicant for a debt management services provider registration must provide the following:

(i) the applicant's name;

(ii) all other names under which the applicant conducts business;

(iii) a physical street address for the applicant's principal business address and that location's telephone number;

(iv) the address of each location in this state at which the applicant will provide debt management services, or if the applicant will have no such location, a statement to that effect;

(v) all other business addresses of the applicant in this state;

(vi) the electronic mail address of the applicant's responsible person listed in subparagraph (B) of this paragraph; and

(vii) the applicant's primary Internet website address.

(B) Responsible person. The person responsible for the day-to-day operation of the applicant's proposed business location must be named.

(C) Authentication. An officer must authenticate the application.

(2) Application Questionnaire for Debt Management Services Provider. All applicable questions must be answered.

(3) Disclosure of Owners and Principal Parties of Debt Management Services Provider.

(A) Detailed ownership and for-profit affiliate disclosure of nonprofit or tax exempt organizations. If the applicant is a nonprofit or tax exempt organization, a detailed description of the ownership interest of each officer, director, agent, or employee of the applicant must be provided. Any member of the immediate family of an officer, director, agent, or employee of the applicant, in a for-profit affiliate or subsidiary of the applicant, or in any other for-profit business entity that provides services to the applicant or to a consumer in relation to the applicant's debt management business must also be provided.

(B) Ownership disclosure. The section inquiring about owners requires an answer based upon the applicant's entity type. If an individual's interest in an entity is community property, then spouses with a community property interest must also be listed. If the business interest is owned by a married individual as separate property, then a statement authenticating that fact should be provided.

(i) All entity types. All applicants must disclose the name and home address of each officer and director of the applicant and each person that holds at least a 10% ownership interest in the applicant.

(ii) Corporations. All shareholders holding 5% or more voting stock must be named. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership and management. This narrative or diagram requires the listing of the names of all officers, directors, and stockholders owning 5% or more stock at each level.

(iii) Other organizations. The owners, trustees, or governing persons must be named.

(4) Statutory Agent Disclosure. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must list a Texas address for legal service. If the statutory agent is an individual, the address must be a residential address.

(5) Surety bond or insurance. An applicant must file with the commissioner either:

(A) a Surety Bond in the prescribed form:

(i) At initial application:

(I) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than $50,000 or if the provider does not have any trust account history for Texas consumers, then a $50,000 bond is required.

(II) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is $50,000 or more, then a $100,000 bond is required.

(ii) At annual renewal:

(I) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is less than $100,000, the bond amount must be equivalent to or exceed the average daily balance, but not be less than $25,000.

(II) If the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond is $100,000 or more, then a $100,000 bond is required; or

(B) evidence of insurance meeting the requirements of Texas Finance Code, §394.206 and clauses (i) - (iii) of this subparagraph, as follows:

(i) a fidelity insurance policy, in the aggregate amount of $100,000 that provides coverage for:

(I) employee dishonesty;

(II) depositor's forgery;

(III) computer fraud; and

(ii) a professional liability insurance policy in the aggregate amount of $100,000.

(iii) The fidelity insurance policy and the professional insurance policy must cover losses sustained by a Texas resident that are attributable to a debt management service or a debt management services agreement. Both the fidelity insurance policy and the professional insurance policy must contain a loss payee clause or rider stating that any loss or claim arising out of an action which occurred within the scope of Texas Finance Code, Chapter 394 may be payable in favor of the State of Texas.

(6) Assumed name certificates. For any applicant that does business under an assumed name as that term is defined in Texas Business & Commerce Code, §36.02(7), the applicant must provide all assumed names used.

(7) Debt management services agreement. The applicant must provide a blank copy of the written debt management services agreement as described in Texas Finance Code, §394.209.

(8) Accreditation organizations. The applicant must provide the names and contact information for:

(A) the independent, third-party accreditation organization of the provider; and

(B) the accreditation organization or program that certifies the provider's credit counselors.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703678

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7640

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SUBCHAPTER B. ANNUAL REQUIREMENTS

7 TAC §88.202

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §88.202, concerning Annual Report for debt management services providers. The amendments are adopted without changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3929) and will not be republished.

The purpose of these amendments is to establish a workable foundation to begin the regulation of for-profit entities that provide debt management services, including new clarification regarding information to be provided about accreditation organizations and credit counselors. Along with adopted amendments to 7 TAC §88.102 and §88.304, as well as adopted new 7 TAC §88.306 and §88.307 published elsewhere in this issue of the *Texas Register*, the adopted amendments serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature. With SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities.

Section 88.202(b) has been amended to include the number of counselors and their certifying organization or program within the annual report information. Coordinating revisions have been made to §88.304(b) so that a provider will only be required to submit actual documentation of its counselors' certification upon request by the commissioner, with the annual report now including the basic information concerning a provider's credit counselors.

The commission received no written comments on the proposal.

These amendments are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to implement Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (amendments effective September 1, 2007) affected by the adopted amendments are or will be contained in Texas Finance Code, Chapter 394, Subchapter C.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 936-7640

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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

7 TAC §88.304

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §88.304, concerning Credit Counseling Standards for debt management services providers. The amendments are adopted without changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3930) and will not be republished.

The purpose of these amendments is to establish a workable foundation to begin the regulation of for-profit entities that provide debt management services, including clarification regarding information to be provided about accreditation organizations and credit counselors, and limits on compensation for credit counselors. Along with adopted amendments to 7 TAC §88.102 and §88.202, as well as adopted new 7 TAC §88.306 and §88.307 published elsewhere in this issue of the *Texas Register*, the adopted amendments serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature. With SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities.

Revisions have been made to §88.304(b) so that a provider will only be required to submit actual documentation of its counselors' certification upon request by the commissioner, with the annual report now including the basic information concerning a provider's credit counselors. (See adopted amendments to 7 TAC §88.202, published separately in this issue.)

Subsection (c) has been added to §88.304 and prohibits the credit counselors of debt management services providers from receiving commissions or bonuses based on the number of debt management services agreements initiated, or on the sale of counseling sessions, educational programs, or materials and supplies provided. A subcommittee of the U.S. Senate performed a study regarding abusive practices in credit counseling and made a specific recommendation that employees not receive any improper incentives, including that employees should not be compensated "based upon the number of clients enrolled in debt management plans . . . ." Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate, *Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling*, p. 54 (S. Rept. 109-55, Apr. 13, 2005). This amendment is intended to implement that recommendation and prevent abusive sales tactics, as counselors will not be compensated based on the number of consumers induced to sign debt management services agreements with the employing provider. The concept for the adopted amendments to §88.304 stems from provisions contained in the 2005 bankruptcy reform regulations from the U.S. Department of Justice, as well as the Uniform Debt-Management Services Act (UDMSA) drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The commission received one written comment on the proposal from Money Management International, Inc. The commenter is "very supportive" of the credit counseling requirements contained in §88.304.

These amendments are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to implement Texas Finance Code, Chapter 394, Subchapter C.

The statutory provisions (amendments effective September 1, 2007) affected by the adopted amendments are or will be contained in Texas Finance Code, Chapter 394, Subchapter C.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
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Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7640

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7 TAC §88.306, §88.307

The Finance Commission of Texas (commission) adopts new 7 TAC §88.306, concerning Fees for Debt Management Services, and §88.307, concerning Consumer Education for debt management services providers. The rules are adopted with changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3931).

The purpose of the new rules is to establish reasonable fees and minimum standards for the delivery of education to consumers. Along with the adopted amendments to §§88.102, 88.202, and 88.304 published elsewhere in this issue of the *Texas Register*, the adopted new rules serve to implement the provisions of Senate Bill 884 (SB 884), as recently enacted by the 80th Texas Legislature.

With the enactment of SB 884, the Legislature has broadened the scope of Texas Finance Code, Chapter 394, Subchapter C, Consumer Debt Management Services, to include for-profit entities. In particular, the bill added subsection (f) to §394.210, which provides specific rulemaking authority to the commission to "establish maximum fair and reasonable fees" for debt management services providers. Section 88.306 executes that intent by instituting reasonable fee provisions. The concepts for many of the fees provided by §88.306 stem from fee provisions contained in the Uniform Debt-Management Services Act (UDMSA) drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The fees outlined by adopted §88.306 below, however, have been modified as a result of industry input in order to incorporate the best possible balance of necessary fee limitations that will be practical in application.

Since the proposal, §88.306(a) has been reorganized and revised in order to clarify the initial intent of the timing of the fees allowed to be charged by debt management services providers. The agency believes that this revised version as presented for adoption outlines the fees with better clarity and in a more chronological fashion. The reorganized and revised §88.306(a) first lists the fee that can be charged to consumers who do not enter into debt management services agreements, and then describes the fees allowed for consumers who do enter into agreements.

The commission received one written comment on the proposal from Money Management International, Inc. While fully supportive of §88.307, the commenter outlines several suggested changes to §88.306. The commission agrees with some of the suggestions, declines to adopt other suggestions and though not including the commenter's recommended wording, has also incorporated some of the concepts offered by the commenter. The specifics regarding each suggestion are outlined below. Please note, however, that since §88.306(a) has been reorganized, the commission will refer to the reorganized subsection designation, or to the concept contained in the particular provision.

Section 88.306(a)(1) contains the fee that can be charged to consumers who do not enter into debt management services agreements. Subsection (a)(1)(A) lists the fee which compensates for counseling sessions, educational programs, or materials and supplies provided to consumers who do not enter into agreements with the provider. For consumers who are provided these services and who do not enter into agreements, the provider may charge a maximum fee of $50. The adopted language of §88.306(a)(1)(A) is modeled after a statutory provision from the State of Kansas. The language of §88.306(a)(1)(B), however, modifies subparagraph (A) to exclude from the fee limitation services provided under federal mandates or programs.

The commenter recommends deletion of the language "if the consumer does not enter into a debt management services agreement with the provider" in reorganized subsection (a)(1)(A), in order "to account for . . . the sale of valuable and worthwhile educational material to clients who enter a debt management plan . . . ." The very purpose of this fee is to compensate providers for counseling and educational services and materials provided to those consumers who do not enter into agreements with the provider. For those consumers who do enter into agreements, the cost of these counseling and educational services and materials is included within the initial enrollment fee, as outlined below in reorganized subsection (a)(2)(A). Consequently, the commission declines to delete this language.

Section 88.306(a)(2) next outlines the fees that can be charged to consumers who do enter into debt management services agreements. Subsection (a)(2)(A) provides for a maximum fee of $100 for initial enrollment services associated with the establishment of a debt management services agreement with the provider.

Section 88.306(a)(2)(B) outlines an allowable monthly service or maintenance fee not to exceed 10% of the consumer's monthly payment, with a minimum of $10 and a maximum of $50 per month.

Since the proposal, reorganized subsection (a)(2)(B) has been revised by deleting the "of" before "10%" and replacing it with "not to exceed." This revision maintains parallel phrasing with the other fee limitations listed throughout §88.306.

The commenter suggests that a minimum of $20 be added to the monthly service or maintenance fee provision. The commission agrees with the concept of adding a minimum fee in order for providers to cover their monthly servicing costs. The commission believes, however, that the suggested minimum amount of $20 is too high, as a balance must be achieved between cost recovery for providers and not overcharging consumers who have smaller monthly payments. When compared with the charges currently offered for monthly electronic bill-pay by major banks (a range of $5.00 - $7.00), the commission maintains that a minimum of $10 is the proper amount to align with Chapter 394, Subchapter C's purpose of consumer protection, while allowing providers to recoup costs. Thus, a minimum of $10 has been added to reorganized subsection (a)(2)(B).

Also with regard to §88.306(a)(2)(B), the commission agrees with the commenter's suggestion of adding "scheduled" as a modifier to the monthly payment. Calculating the monthly service or maintenance fee based on the scheduled monthly payment will provide more clarity and stability to both consumers and providers.

The commenter recommends the addition of language addressing situations where a consumer either makes an additional unscheduled payment one month or deposits less than the monthly scheduled amount. The commission agrees with providing direction for these situations. Therefore, under §88.306(a)(2)(B), clauses (i) and (ii) have been added incorporating these concepts and outlining the permissible fees for these circumstances.

Subsection (a)(2)(C) adds a provision concerning credit reports provided to consumers, as recommended by the commenter. As opposed to the commenter's suggested "reasonable fee," the adopted language permits providers to recover their out-of-pocket costs for providing credit reports to consumers who enter into agreements. The commission believes that this cost recovery limitation will appropriately compensate providers while serving the statute's purpose of protecting consumers.

The commenter offers a provision stating the following: "A provider will not be in violation of any fee limits promulgated by these regulations in the event . . . a client entered into a contract with the provider while residing in another state and then relocates his or her residence to Texas . . . ." The commenter's language indicates that the reason a provider would not be in violation of Texas fee limitations is because the fee regulations of the consumer's state of origin where the agreement was executed would govern. Accordingly, the commission views this recommended language to constitute a choice of law provision. The commission is unable to adopt such a provision at this time under the Administrative Procedure Act (APA), as this choice of law issue was not addressed in the proposal. The commission will consider proposing a rule incorporating choice of law concepts at a later date.

A provision concerning the refunding of overcharges made in error is also suggested by the commenter. Through Texas Finance Code, §349.201, the option to cure is specifically available to any lender or creditor who makes a transaction subject to Texas Finance Code, Title 4, Subtitle B. Likewise, Texas Finance Code, §305.103 provides Subtitle A creditors and lenders similar cure provisions. These cure provisions have been consistently applied by the courts to Title 4 licensees. Furthermore, in the administrative context, the agency routinely allows its licensees under Title 4 to provide restitution to debtors. While there is no analogous statutory provision in Title 5, the agency, in its administrative enforcement efforts, anticipates continuing this policy to allow a debt management services provider who violates a fee limitation, the ability to provide restitution in order to bring the fee within regulatory compliance.

Although the commission agrees with the commenter's concerns and desire to correct errors, the commission believes that adopting this suggestion is outside the agency's statutory authority. The commenter's recommended provision would serve to reduce the amount of protection for consumers by potentially eliminating private remedies available under Texas Finance Code, §394.215. The commission cannot legislate the rights of third parties through the rulemaking process. While the commission agrees that it is a prudent business practice to correct errors promptly upon discovery, allowing refunds within 10 days of detection could result in corrections being made after years of overcharging, without an opportunity for further redress of the violation. As outlined above, nothing in Title 5 of the Texas Finance Code, or in Chapter 394, creates this sort of statutory protection for debt management services providers. Thus, the commission declines to adopt the commenter's provision regarding the refunding of errant overcharges.

The commenter lastly recommends a subsection granting the agency authority to adjust all fee restrictions by providing notice on the commission's website. Adjusting fees in this manner is outside the agency's statutory authority and would violate the APA by not providing proper notice and public comment on changes to fee limitations contained in the rule. Furthermore, frequently changing fees with only notice posted on the agency's or commission's website would not be in harmony with the purpose of the statute. The commenter's suggested provision would work against proper consumer notice and not provide consumers with a reasonable expectation of fee amounts. The commission may amend the fee limitations through the rulemaking process as necessary. Also, interested persons may submit a petition for rulemaking under Texas Government Code, §2001.021 if an interested party believes the fees require adjustment. Therefore, the commission declines to adopt this suggestion.

Section 88.306(b) prohibits a provider (without advance approval) from charging a fee or providing credit or other insurance, coupons, club memberships, Internet or computer access, or any other services not directly related to debt management or education about personal finance. The adopted language of §88.306(b) is modeled after both the UDMSA and a recently passed bill from the State of Colorado, although this adoption has an added modifier to allow pre-approval by the commissioner.

Additionally, since the proposal, descriptive taglines have been added to §88.306 to introduce each subsection, offering clarity and direction for the reader.

The adoption of §88.307 serves to address the wide disparity in the amount of education provided to consumers seeking debt management services in Texas. In fact, financial consumer education is greatly needed throughout the country, as "[t]he Department of the Treasury, as well as consumer and industry groups, have identified the lack of financial literacy in the United States as a serious, widespread problem." United States General Accounting Office, Report to the Chairman and Ranking Minority Member, Special Committee on Aging, U.S. Senate, *Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending*, p. 89 (GAO-04-280, Jan. 2004) (footnote omitted). Furthermore, a subcommittee of the U.S. Senate performed a study regarding abusive practices in credit counseling, where "current and former credit counselors and CCA [credit counseling agency] clients were interviewed and Subcommittee staff responded to advertisements from various agencies to see what advice was being given." Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, U.S. Senate, *Profiteering in a Non-Profit Industry: Abusive Practices in Credit Counseling*, p. 2 (S. Rept. 109-55, Apr. 13, 2005). The Subcommittee found that the actions of some recent entrants into the credit counseling industry had resulted in an increasing number of consumer complaints about, among other things, "non-existent education." Id. The Subcommittee specifically recommended that credit counseling agencies provide consumer education in the form of "affirmative financial counseling and educational programs designed to reduce excessive indebtedness . . . ." *Id.* at 53.

Thus, it has become evident that minimum standards need to be set for the industry so that consumers will have an expectation of receiving consistent content and quality information in the education supplied by debt management services providers. Armed with the same high level of reliable information, consumers throughout the state can make more informed choices regarding the management of their debt. The purpose of §88.307 is to provide one set of minimum standards, across the entire industry of debt management services providers, for the delivery of consumer education.

Section 88.307(a) outlines the required consumer education, including topics, analysis, and instruction, that must be provided by a debt management services provider to a consumer in conjunction with the consumer's entering into a debt management services agreement with the provider. Since the proposal, a minor revision has been made to §88.307(a) to clarify the timing of when the required consumer education must be provided, as originally intended. In §88.307(a), the word "Before" has been replaced with the phrase "In conjunction with" to best reflect the applicability of §88.307(a) to consumers who execute debt management services agreements with the provider. The adopted language of §88.307(a) is partly modeled after provisions contained in the 2005 bankruptcy reform regulations from the U.S. Department of Justice.

Section 88.307(b) establishes that the education provided under §88.307(a) must give the consumer an adequate opportunity to obtain a complete financial assessment and comprehensive counseling, relative to the consumer's personal financial situation.

Section 88.307(c) provides some suggested guidelines regarding the amount of consumer education that should be provided to consumers who enter into debt management services agreements.

Since the proposal, a technical correction has been made to §88.307(c)(2) by inserting the word "for" after "optimum guideline."

Section 88.307(d) encourages debt management services providers to provide community-based financial education initiatives in addition to the required counseling for consumers who enter into agreements.

The commenter is "very supportive" of the consumer education requirements contained in §88.307.

These new sections are adopted under Texas Finance Code, §394.214, which authorizes the commission to adopt rules to implement Texas Finance Code, Chapter 394, Subchapter C. Additionally, Texas Finance Code, §394.210(f) grants the commission the authority to "establish maximum fair and reasonable fees" for debt management services providers.

The statutory provisions (amendments effective September 1, 2007) affected by the adopted new sections are, or will be, contained in Texas Finance Code, Chapter 394, Subchapter C.

§88.306. Fees for Debt Management Services.

(a) Allowable fees. A provider may not charge or receive from a consumer, directly or indirectly (except for "fair share" and other such creditor or lender fees or contributions), a fee except for the following:

(1) if the consumer does not enter into a debt management services agreement with the provider:

(A) a fee, not to exceed $50, for a counseling session, an educational program, or materials and supplies provided by the provider to the consumer;

(B) subparagraph (A) of this paragraph does not apply to any services provided pursuant to a federal mandate or program;

(2) if the consumer enters into a debt management services agreement with the provider:

(A) an initial enrollment fee not to exceed $100, for services associated with the establishment of a debt management services agreement with the provider (e.g., setting up an account and consultation);

(B) a monthly service or maintenance fee not to exceed 10% of the consumer's scheduled monthly payment to creditors, allowing a minimum of $10, up to a maximum of $50 per month;

(i) if the consumer makes a payment in an amount less than the amount scheduled, the provider may charge a monthly service or maintenance fee that is calculated on the scheduled amount;

(ii) if the consumer makes a payment in addition to the scheduled payment during the month of the scheduled payment, the provider may charge an additional fee that is calculated on the monthly service or maintenance fee for the scheduled amount;

(C) a fee to cover the provider's out-of-pocket costs for providing credit reports to the consumer.

(b) Services not directly related to debt management services or educational services concerning personal finance. A provider may not charge a consumer for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance, unless approved by the commissioner in advance.

§88.307. Consumer Education.

(a) Required counseling for consumers who enter into debt management services agreements. In conjunction with entering into a debt management services agreement with a consumer, the provider's credit counselors must provide education to the consumer regarding budget analysis and credit counseling services that include:

(1) an outline of available opportunities to resolve the consumer's credit problems;

(2) an analysis of the consumer's current financial condition;

(3) discussion of the factors that caused such financial condition;

(4) assistance in developing options in responding to the consumer's problems without incurring negative amortization of debt; and

(5) information and instruction on the following topics:

(A) budget development;

(B) money management; and

(C) wise use of credit.

(b) Adequate opportunity for consumers. Credit counseling provided under subsection (a) of this section must give the consumer an adequate opportunity to obtain a complete financial assessment and comprehensive counseling, relative to the consumer's personal financial situation.

(c) Suggested guidelines.

(1) This subsection provides suggested guidelines for the amount of credit counseling to be provided to consumers who enter into debt management services agreements. These suggested guidelines are intended to give debt management services providers considerable flexibility to fit individual needs while providing some guidance.

(2) An optimum guideline for the amount of credit counseling to be provided to consumers who enter into debt management services agreements is 45 - 90 minutes, depending on the unique circumstances of the consumer's debt and financial situation.

(d) Community-based financial education encouraged. Debt management services providers are encouraged to provide community-based financial education initiatives in addition to the counseling required by this section for consumers who enter into debt management services agreements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: June 29, 2007
For further information, please call: (512) 936-7640

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CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §90.403, §90.404

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §90.403, concerning Model Clauses and §90.404, concerning Permissible Changes for second lien home equity loans. The amendments are adopted with changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3933).

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation, and to make revisions enhancing consistency and clarity.

In reference to the recent legislation, House Bill 2061 (HB 2061) was signed by Governor Perry and went into immediate effect during the 2007 legislative session. This bill amends the Notice of Confidentiality Rights contained in Texas Property Code, §11.008, and now requires that this notice be included on any instrument transferring an interest in real property, whether or not any social security numbers or driver's license numbers are contained in the instrument. The commission last adopted amendments concerning these confidentiality notices at the February 23, 2007, commission meeting. As part of that adoption, the commission removed the notices from the model contracts. At that time, §11.008 required that the notice be given only if social security numbers or driver's license numbers were actually present in the transferring instrument. The February change was intended to reflect the current industry practice of not including such information on security documents, triggering inclusion of the notice only if the lender disclosed the borrower's personal information.

With the recent passage of HB 2061, however, the confidentiality notice is now mandatory on all instruments transferring an interest in real property. Thus, with this adoption, the commission is returning the Notice of Confidentiality Rights clauses included throughout the plain language rules to the model contracts and reinstating the language regarding the required nature of the notices to the rule text in compliance with HB 2061. Consequently, with respect to the confidentiality notices, these adopted amendments will result in the rules and model contracts more closely resembling their state prior to the February 23, 2007, adoption. Adopted amendments concerning the Notice of Confidentiality Rights clause are contained in §90.403(c)(37). This adoption will return the notice to the model contract contained in Figure: 7 TAC §90.404(a)(8).

The commission received one written comment regarding the proposal, from Black, Mann & Graham, L.L.P. The comment concerns §90.403 and §90.404, and relates to issues pertaining to the Notice of Confidentiality Rights.

In reference to §90.403(c)(37), the commenter believes that the proposed language regarding the location of the confidentiality notice is in conflict with provisions of the Texas Local Government Code and the Texas Property Code. While §191.007(c) of the Texas Local Government Code requires that "a clearly identifying heading . . . be placed at the top of the first page," it prefaces that statement with an exception deferring to Texas Property Code, §11.008. Section 11.008(c) requires that the Notice of Confidentiality Rights appear "on the top of the first page of the instrument." The commenter recommends that the phrase "either above or directly below the document heading" be deleted from §90.403(c)(37)(A). The commission agrees with the suggested change and has deleted this phrase from §90.403(c)(37)(A). Consequently, the removal of this phrase will result in the preceding provision having no change from the current text. Furthermore, in the Figure: 7 TAC §90.404(a)(8), the Notice of Confidentiality Rights has been relocated to the very top of the document above the heading, as to best reflect "the top of the first page" language contained in HB 2061.

Also concerning subsection (c)(37) of §90.403, the commenter recommends that the date reference of "January 1, 2004," be changed to March 28, 2007, which is the effective date of HB 2061. Although the commission agrees that the January 1, 2004, date should be removed from §90.403(c)(37), the commission does not believe that any other date reference is necessary. At the time of this rule's initial proposal, the date was needed in order to establish the future effective date of the authorizing legislation. With HB 2061, the effective date is in the past, and thus, all future contracts subject to HB 2061 will be required to contain the confidentiality notices. Therefore, the commission agrees to delete "On or after January 1, 2004," from §90.403(c)(37), but declines to add "March 28, 2007."

Regarding Figure: 7 TAC §90.404(a)(8), the commenter believes that the proposed notice "does not substantially comply with the promulgated text in new §11.008(c), Property Code, added by House Bill 2061, because the notice in proposed Figure: 7 TAC §90.404(a)(8) refers only to the document on which it is located and not, as required by Section 11.008(c), to 'any instrument that transfers an interest in real property'." The commenter recommends that the text of the Notice of Confidentiality Rights contained in Figure: 7 TAC §90.404(a)(8) be revised by

replacing "THIS DOCUMENT" with "ANY DOCUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY." Although the commission would prefer this revision, the commission is unable to adopt the suggested language at this meeting, as the corresponding rule text of the notice has been proposed with no changes. In order to maintain consistency between the model clause contained in the rule text and the notice included in the figure, the commission declines to adopt the suggested language at this time. The commission believes that the current notice language substantially complies with HB 2061, and is returning the same text to the figure. At a future meeting, however, the commission plans on proposing the commenter's recommended Notice of Confidentiality Rights so that it may be uniformly revised within the model clauses and the model contracts.

Two revisions to enhance consistency and clarity are being adopted for the figures in 7 TAC §90.403(b)(11) and §90.404(a)(7). In §90.403(b)(11), which contains the property insurance model provision, the plural personal pronoun "We" is being replaced with "You" for consistency purposes. As amended, §90.403(b)(11) will include language parallel to the other property insurance sections contained throughout the plain language rules.

Regarding Figure: 7 TAC §90.404(a)(7), a comment offered prior to the last adoption has been reconsidered concerning the home equity disclosure statement. For the best clarity, the commission now agrees that the disclosure should be amended as follows: "THIS IS [SECURITY DOCUMENT SECURES] AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION." The deleted language inappropriately refers to a security document, whereas Figure: 7 TAC §90.404(a)(7) is a model home equity note.

These amendments as well as all of the rules contained in Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapter A - F, for those licensees utilizing the model provisions, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §§90.105, 90.403, 90.404, 90.503, 90.504, 90.603, and 90.604 in the *Texas Register* on March 9, 2007 (32 TexReg 1232), listed the agency's implementation date as October 1, 2007. Given these additional amendments, some required by recent legislation, the agency intends to provide licensees until January 1, 2008, for compliance.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

§90.403. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter G second lien home equity loan contract:

(1) Identification. The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, and the name and address of the borrower. The model clause identifying the pronouns used for the borrower and the lender reads: "A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder." The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

(2) Truth in Lending Act (TILA) disclosure box. The model Truth in Lending Act (TILA) disclosure box reads:
Figure: 7 TAC §90.403(b)(2) (No change.)

(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the Texas scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause for the borrower's promise to pay reads: "This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution."

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(5) Late charge. The model late charge provision for contracts using the scheduled installments earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(6) After maturity interest. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(8) Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.403(b)(8)(A) (No change.)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.403(b)(8)(B) (No change.)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.403(b)(8)(C) (No change.)

(9) Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A licensed lender may always choose a lesser amount. The fee for dishonored check model clause reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(10) Default clause. The model provision specifying the conditions causing default reads:
Figure: 7 TAC §90.403(b)(10) (No change.)

(11) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.403(b)(11)

(12) Credit insurance. If single premium credit insurance is allowable, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium. "The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four (4) times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:
Figure: 7 TAC §90.403(b)(12) (No change.)

(13) Mailing of notices to borrower. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail."

(14) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(15) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(16) Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement."

(17) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud. If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement."

(18) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than the law allows."

(19) Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(20) Contract supersedes prior agreements. For loan agreements exceeding $50,000.00, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(21) Security document. The model provision stating that the homestead described in the loan agreement is subject to the lien of the security document reads: "The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities."

(22) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law."

(23) Complaints and inquiries notice. The model complaints and inquiries notice reads: "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit

information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, www.occc.state.tx.us, (800) 538-1579."

(24) Clause describing collateral. The model provision describing the collateral reads: "The homestead described above by the property address is subject to the lien of the Security Document."

(25) Signature blocks. The licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.403(b)(25) (No change.)

(c) For the security document for a Chapter 342, Subchapter G second lien home equity loan contract:

(1) The model definitions section reads:

(A) ""Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute.
Figure: 7 TAC §90.403(c)(1)(I) (No change.)

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of My Homestead; condemnation or other taking of all or any part of My Homestead; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease"."

(2) Secured agreement. The model provision regarding the secured nature of the agreement reads: "To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution."

(3) Transfer of rights in the property. The model provision regarding a transfer of rights in the property reads:
Figure: 7 TAC §90.403(c)(3) (No change.)

(4) Borrower and Lender's promise. The model provision regarding the borrower and lender's promise to comply with the terms of the security document reads: "YOU AND I PROMISE:".

(5) Late charges and prepayment. The model provision regarding late charges and prepayment of principal and interest reads:
Figure: 7 TAC §90.403(c)(5) (No change.)

(6) Funds for escrow items. The model provision regarding the funds for escrow items reads:
Figure: 7 TAC §90.403(c)(6) (No change.)

(7) Charges and liens. The model provision regarding charges and liens reads:
Figure: 7 TAC §90.403(c)(7) (No change.)

(8) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.403(c)(8) (No change.)

(9) Homestead. The model provision stating that the borrower occupies the property as his homestead reads: "I now occupy and use the property secured by this Security Document as my Texas homestead."

(10) Preservation, maintenance, protection, and inspection of the property. The model provision regarding preservation, maintenance, protection, and inspection of the property reads: "I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs."

(11) Conditions causing actual fraud. The model provision specifying the conditions causing actual fraud reads:
Figure: 7 TAC §90.403(c)(11) (No change.)

(12) Protection of lender's interest in the property and rights under the security document. The model provision regarding the protection of the lender's interest in the property and rights under the security document reads:
Figure: 7 TAC §90.403(c)(12) (No change.)

(13) Assignment of miscellaneous proceeds and forfeiture. The model provision regarding the assignment of miscellaneous proceeds and forfeiture reads:
Figure: 7 TAC §90.403(c)(13) (No change.)

(14) Forbearance not a waiver. The model provision specifying that the borrower is not released from liability if the lender modifies the payment schedule reads: "My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to extend time for payment or modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later."

(15) Joint and several liability, security document execution, successors obligated. The model provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the homestead and binds his successors and assigns reads:
Figure: 7 TAC §90.403(c)(15) (No change.)

(16) Extension of credit charges. The model provision regarding the extension of credit charges reads:
Figure: 7 TAC §90.403(c)(16) (No change.)

(17) Delivery of notices. The model provision regarding the delivery of notices reads: "Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement."

(18) Governing law and severability. The model provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid reads: "The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective."

(19) Rules of construction. The model provision regarding rules of clause construction reads:
Figure: 7 TAC §90.403(c)(19) (No change.)

(20) Loan agreement copies. The model provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made reads: "At the time the Loan Agreement is made, you will give me copies of all documents I sign."

(21) Transfer of interest in property. The model provision regarding a transfer of interest in the property reads: ""Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand."

(22) Borrower's right to reinstate after acceleration. The model provision regarding the borrower's right to reinstate after acceleration reads:
Figure: 7 TAC §90.403(c)(22) (No change.)

(23) Sale of note, change of loan servicer, notice of grievance, and lender's right to comply. The model provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply reads:
Figure: 7 TAC §90.403(c)(23) (No change.)

(24) Hazardous substances. The model provision regarding hazardous substances reads:
Figure: 7 TAC §90.403(c)(24) (No change.)

(25) Acceleration and remedies. The model provision regarding acceleration and remedies reads:
Figure: 7 TAC §90.403(c)(25) (No change.)

(26) Power of sale. The model provision regarding the power of sale reads:
Figure: 7 TAC §90.403(c)(26) (No change.)

(27) Release. The model provision regarding the release of the lien securing the loan agreement reads: "You will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the

Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution."

(28) Non-recourse liability. The model provision specifying that the loan agreement is given without personal liability against each owner of the homestead and the spouse of each owner reads:
Figure: 7 TAC §90.403(c)(28) (No change.)

(29) Proceeds. The model provision specifying that the borrower has not been required to repay another debt with the proceeds of the loan reads: "I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender."

(30) No assignment of wages. The model provision specifying that the borrower has not assigned wages as security for the loan agreement reads: "I have not assigned wages as security for the Loan Agreement."

(31) Acknowledgment of fair market value. The model provision specifying that the lender and the borrower have agreed in writing to the fair market value of the homestead reads: "You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement."

(32) Trustees and trustee liability. The model provision regarding trustees and trustee liability reads:
Figure: 7 TAC §90.403(c)(32) (No change.)

(33) Waiver of additional collateral. The model provision regarding the lender's waiving additional collateral reads:
Figure: 7 TAC §90.403(c)(33) (No change.)

(34) Default. The model default provision reads: "Any default of my agreements with you will be a default of this Security Document."

(35) Signature blocks. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.403(c)(35) (No change.)

(36) Non-purchase disclosure. The model provision indicating that the security document does not finance a purchase transaction should appear at the beginning of the document, below the heading and prior to the definitions section. The model non-purchase disclosure provision reads: "This Security Document is not intended to finance Borrower's acquisition of the Property."

(37) Notice of confidentiality rights disclosure. The security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

§90.404. Permissible Changes.

(a) A licensed lender may consider making the following types of changes to the second lien home equity loans plain language model clauses:

(1) Adding information related to information set forth in the model clauses that is not otherwise prohibited by law;

(2) Substituting another term for "Lender" or "Borrower" that has the same meaning, or using pronouns such as "you," "we," and "us";

(3) Presenting the model clauses in any order, and combining or further segregating the model clauses;

(4) Inserting descriptive headings or number provisions;

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code; or

(6) Making other changes which do not affect the substance of the disclosures.

(7) A sample model note is presented in the following example.
Figure: 7 TAC §90.404(a)(7)

(8) A sample model security document is presented in the following example.
Figure: 7 TAC §90.404(a)(8)

(b) An authorized licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703682
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 936-7640

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SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §90.503, §90.504

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §90.503, concerning Model Clauses and §90.504, concerning Permissible Changes for second lien purchase money loans. The amendments are adopted with changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3934).

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation.

House Bill 2061 (HB 2061) was signed by Governor Perry and went into immediate effect during the 2007 legislative session. This bill amends the Notice of Confidentiality Rights contained in Texas Property Code, §11.008, and now requires that this notice be included on any instrument transferring an interest in real property, whether or not any social security numbers or driver's license numbers are contained in the instrument. The commission last adopted amendments concerning these confidentiality

notices at the February 23, 2007, commission meeting. As part of that adoption, the commission removed the notices from the model contracts. At that time, §11.008 required that the notice be given only if social security numbers or driver's license numbers were actually present in the transferring instrument. The February change was intended to reflect the current industry practice of not including such information on security documents, triggering inclusion of the notice only if the lender disclosed the borrower's personal information.

With the recent passage of HB 2061, however, the confidentiality notice is now mandatory on all instruments transferring an interest in real property. Thus, with this adoption, the commission is returning the Notice of Confidentiality Rights clauses included throughout the plain language rules to the model contracts and reinstating the language regarding the required nature of the notices to the rule text in compliance with HB 2061. Consequently, with respect to the confidentiality notices, these adopted amendments will result in the rules and model contracts more closely resembling their state prior to the February 23, 2007, adoption. Adopted amendments concerning the Notice of Confidentiality Rights clause are contained in §90.503(c)(35). This adoption will return the notice to the model contract contained in Figure: 7 TAC §90.504(a)(8).

The commission received one written comment regarding the proposal, from Black, Mann & Graham, L.L.P. The comment concerns §90.503 and §90.504, and relates to issues pertaining to the Notice of Confidentiality Rights.

In reference to §90.503(c)(35), the commenter believes that the proposed language regarding the location of the confidentiality notice is in conflict with provisions of the Texas Local Government Code and the Texas Property Code. While §191.007(c) of the Texas Local Government Code requires that "a clearly identifying heading . . . be placed at the top of the first page," it prefaces that statement with an exception deferring to Texas Property Code, §11.008. Section 11.008(c) requires that the Notice of Confidentiality Rights appear "on the top of the first page of the instrument." The commenter recommends that the phrase "either above or directly below the document heading" be deleted from §90.503(c)(35)(A). The commission agrees with the suggested change and has deleted this phrase from §90.503(c)(35)(A). Consequently, the removal of this phrase will result in the preceding provision having no change from the current text. Furthermore, in Figure: 7 TAC §90.504(a)(8) the Notice of Confidentiality Rights has been relocated to the very top of the document above the heading, as to best reflect "the top of the first page" language contained in HB 2061.

Also concerning subsection (c)(35) of §90.503, the commenter recommends that the date reference of "January 1, 2004," be changed to March 28, 2007, which is the effective date of HB 2061. Although the commission agrees that the January 1, 2004, date should be removed from §90.503(c)(35), the commission does not believe that any other date reference is necessary. At the time of this rule's initial proposal, the date was needed in order to establish the future effective date of the authorizing legislation. With HB 2061, the effective date is in the past, and thus, all future contracts subject to HB 2061 will be required to contain the confidentiality notices. Therefore, the commission agrees to delete "On or after January 1, 2004," from §90.503(c)(35), but declines to add "March 28, 2007."

Regarding Figure: 7 TAC §90.504(a)(8), the commenter believes that the proposed notice "does not substantially comply with the promulgated text in new Section 11.008(c), Property Code, added by House Bill 2061, because the notice in proposed Figure: 7 TAC §90.404(a)(8) refers only to the document on which it is located and not, as required by Section 11.008(c), to 'any instrument that transfers an interest in real property'." The commenter recommends that the text of the Notice of Confidentiality Rights contained in Figure: 7 TAC §90.504(a)(8) be revised by replacing "THIS DOCUMENT" with "ANY DOCUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY." Although the commission would prefer this revision, the commission is unable to adopt the suggested language at this meeting, as the corresponding rule text of the notice had been proposed with no changes. In order to maintain consistency between the model clause contained in the rule text and the notice included in the figure, the commission declines to adopt the suggested language at this time. The commission believes that the current notice language substantially complies with HB 2061, and is returning the same text to the figure. At a future meeting, however, the commission plans on proposing the commenter's recommended Notice of Confidentiality Rights so that it may be uniformly revised within the model clauses and the model contracts.

These amendments as well as all of the rules contained in Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapter A - F, for those licensees utilizing the model provisions, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §§90.105, 90.403, 90.404, 90.503, 90.504, 90.603, and 90.604 in the *Texas Register* on March 9, 2007 (32 TexReg 1232), listed the agency's implementation date as October 1, 2007. Given these additional amendments, some required by recent legislation, the agency intends to provide licensees until January 1, 2008, for compliance.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

§90.503. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter G second lien purchase money loan contract:

(1) Identification. The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, the name and address of the borrower, and the property address. The model clause identifying the pronouns used for the borrower and the lender reads: A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your"

means the Lender or "Note Holder". The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments."

(2) Truth in Lending Act (TILA) disclosure box. The model Truth in Lending Act (TILA) disclosure box reads:
Figure: 7 TAC §90.503(b)(2) (No change.)

(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(5) Late charge. The model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(6) After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A creditor may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(7) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(8) Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.503(b)(8)(A) (No change.)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.503(b)(8)(B) (No change.)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.503(b)(8)(C) (No change.)

(9) Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A creditor may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(10) Default clause. The model provision specifying the conditions causing default reads:
Figure: 7 TAC §90.503(b)(10) (No change.)

(11) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.503(b)(11) (No change.)

(12) Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four (4) times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:
Figure: 7 TAC §90.503(b)(12) (No change.)

(13) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(14) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(15) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(16) Collection expenses clause. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(17) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(18) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(19) Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(20) Contract supersedes prior agreements. For loan agreements exceeding $50,000.00, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model integration clause providing that the contract supersedes prior agreements reads: "This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(21) Security document. The model provision stating that the property described in the loan agreement is subject to the lien of the security document reads: "In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note."

(22) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(23) Complaints and inquiries notice. The model complaints and inquiries notice reads: "The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207; Telephone No.: (800) 538-1579; Fax No.: (512) 936-7610; E-mail: consumer.complaints@occc.state.tx.us; Website: www.occc.state.tx.us."

(24) Clause describing collateral. The model provision describing the collateral reads: "The collateral described above by the property address is subject to the lien of the Security Document."

(25) Signature blocks. The licensee may also provide additional signature lines for witness signatures. The model provision regarding signature blocks reads.
Figure: 7 TAC §90.503(b)(25) (No change.)

(c) For the security document for a Chapter 342, Subchapter G second lien purchase money loan contract:

(1) The model definitions section reads:

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____ (maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute.
Figure: 7 TAC §90.503(c)(1)(H) (No change.)

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section ___ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq*.) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease".

(2) Secured agreement. The model provision regarding the secured nature of the agreement reads: "To secure this Loan Agreement, I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds."

(3) Transfer of rights in the property. The model provision regarding a transfer of rights in the property reads:
Figure: 7 TAC §90.503(c)(3) (No change.)

(4) Borrower and Lender's promise. The model provision regarding the borrower and lender's promise to comply with the terms of the security document reads: "YOU AND I PROMISE:".

(5) Late charges and prepayment. The model provision regarding late charges and prepayment of principal and interest reads:
Figure: 7 TAC §90.503(c)(5) (No change.)

(6) Funds for escrow items. The model provision regarding the funds for escrow items reads:
Figure: 7 TAC §90.503(c)(6) (No change.)

(7) Charges and liens. The model provision regarding charges and liens reads:
Figure: 7 TAC §90.503(c)(7) (No change.)

(8) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.503(c)(8) (No change.)

(9) Preservation, maintenance, protection, and inspection of the property. The model provision regarding preservation, maintenance, protection, and inspection of the property reads: "I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs."

(10) Protection of lender's interest in the property and rights under the security document. The model provision regarding protection of the lender's interest in the property and rights under the security document reads:
Figure: 7 TAC §90.503(c)(10) (No change.)

(11) Assignment of miscellaneous proceeds and forfeiture. The model provision regarding the assignment of miscellaneous proceeds and forfeiture reads:
Figure: 7 TAC §90.503(c)(11) (No change.)

(12) Forbearance not a waiver. The model provision specifying that the borrower is not released from liability if the lender modifies the payment schedule reads: "My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to extend time for payment or modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later."

(13) Joint and several liability, security document execution, successors obligated. The model provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the property and binds his successors and assigns reads:
Figure: 7 TAC §90.503(c)(13) (No change.)

(14) Extension of credit charges. The model provision for the extension of credit charges reads:
Figure: 7 TAC §90.503(c)(14) (No change.)

(15) Delivery of notices. The model provision regarding the delivery of notices reads: "Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement."

(16) Governing law and severability. The model provision regarding the law governing the contract, stating that if any part of the contract is declared invalid, the rest of the contract remains valid reads: "The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective."

(17) Rules of construction. The model provision regarding rules of clause construction reads:
Figure: 7 TAC §90.503(c)(17) (No change.)

(18) Loan agreement copies. The model provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made reads: "At the time the

Loan Agreement is made, you will give me copies of all documents I sign."

(19) Transfer of interest in property. The model provision regarding a transfer of interest in the property reads: "Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand."

(20) Borrower's right to reinstate after acceleration. The model provision regarding the borrower's right to reinstate after acceleration reads:
Figure: 7 TAC §90.503(c)(20) (No change.)

(21) Sale of note, change of loan servicer, notice of grievance, and lender's right to comply. The model provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply reads: "A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section. No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law. You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement. Your right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement."

(22) Hazardous substances. The model provision regarding hazardous substances reads:
Figure: 7 TAC §90.503(c)(22) (No change.)

(23) Acceleration and remedies. The model provision regarding acceleration and remedies reads:
Figure: 7 TAC §90.503(c)(23) (No change.)

(24) Assignment of rents, appointment of receiver, and lender in possession. The model provision regarding assignment of rents, appointment of receiver, and the lender in possession reads: "As additional security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received."

(25) Power of sale. The lender has the option to choose wording to indicate that a Trustee's deed will convey good title to the Property that cannot be defeated. The model provision regarding the power of sale reads:
Figure: 7 TAC §90.503(c)(25) (No change.)

(26) Release. If the lender cannot return the note to the borrower, the lender may provide the borrower with a discharge and release of all obligations under the loan. The discharge must meet the requirements of Texas Finance Code, §342.454. The model provision regarding the release of the lien securing the loan agreement reads: "Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligations under the loan. I will pay only the cost of recording the release of lien."

(27) Lender's rights and borrower's responsibilities. The model provision specifying that each person who signs the document is responsible for each promise and duty in the security document reads:
Figure: 7 TAC §90.503(c)(27) (No change.)

(28) Trustees and trustee liability. The model provision regarding trustees and trustee liability reads:
Figure: 7 TAC §90.503(c)(28) (No change.)

(29) Default. The model default provision reads: "Any default of my agreements with you will be a default of this Security Document."

(30) Subrogation. The model provision regarding subrogation reads: "If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment."

(31) Partial invalidity. The model provision regarding what happens if the sums secured and other charges violate applicable law reads: "If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt."

(32) Request for notice of default and foreclosure under superior mortgages or security documents. The model provision regard-

ing the lender and borrower's request for notice of default and foreclosure under superior mortgages or security documents reads:
Figure: 7 TAC §90.503(c)(32) (No change.)

(33) Signature blocks. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.503(c)(33) (No change.)

(34) Acknowledgment. The model provision regarding the acknowledgment reads:
Figure: 7 TAC §90.503(c)(34) (No change.)

(35) Notice of confidentiality rights disclosure. The security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

§90.504. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien purchase money loans plain language model clauses:

(1) Adding information related to information set forth in the model clauses that is not otherwise prohibited by law;

(2) Substituting another term for "Lender" or "Borrower" that has the same meaning, or using pronouns such as "you," "we," and "us";

(3) Presenting the model clauses in any order, and combining or further segregating the model clauses;

(4) Inserting descriptive headings or number provisions;

(5) Changing the case of a word if otherwise permitted by the Texas Finance Code; or

(6) Making other changes which do not affect the substance of the disclosures.

(7) A sample model note is presented in the following example.
Figure: 7 TAC §90.504(a)(7)

(8) A sample model security document is presented in the following example.
Figure: 7 TAC §90.504(a)(8)

(b) A licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: June 29, 2007
For further information, please call: (512) 936-7640

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SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §90.603, §90.604

The Finance Commission of Texas (commission) adopts amendments to 7 TAC §90.603, concerning Model Clauses and §90.604, concerning Permissible Changes for second lien home improvement contracts. The amendments are adopted with changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3935).

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to implement changes required by recently passed legislation.

House Bill 2061 (HB 2061) was signed by Governor Perry and went into immediate effect during the 2007 legislative session. This bill amends the Notice of Confidentiality Rights contained in Texas Property Code, §11.008, and now requires that this notice be included on any instrument transferring an interest in real property, whether or not any social security numbers or driver's license numbers are contained in the instrument. The commission last adopted amendments concerning these confidentiality notices at the February 23, 2007, commission meeting. As part of that adoption, the commission removed the notices from the model contracts. At that time, §11.008 required that the notice be given only if social security numbers or driver's license numbers were actually present in the transferring instrument. The February change was intended to reflect the current industry practice of not including such information on security documents, triggering inclusion of the notice only if the lender disclosed the borrower's personal information.

With the recent passage of HB 2061, however, the confidentiality notice is now mandatory on all instruments transferring an interest in real property. Thus, with this adoption, the commission is returning the Notice of Confidentiality Rights clauses included throughout the plain language rules to the model contracts and reinstating the language regarding the required nature of the notices to the rule text in compliance with HB 2061. Consequently, with respect to the confidentiality notices, these adopted amendments will result in the rules and model contracts more closely resembling their state prior to the February 23, 2007, adoption. Adopted amendments concerning the Notice of Confidentiality Rights clauses are contained in §90.603(b)(15), and §90.603(f)(35). This adoption will return the notices to the model contracts contained in the figures for 7 TAC §90.604(a)(12), and §90.604(a)(16).

Although the commission did not receive any comments directly addressing the provisions of this proposal, the commission did receive two written comments regarding the companion proposals concerning §90.403 and §90.404, and §90.503 and §90.504. Both of the comments are from Black, Mann & Graham, L.L.P. and relate to issues pertaining to the Notice of Confidentiality

Rights. The two comments outline identical concerns with respect to the sections contained in those two subchapters. For the reader's convenience, the commission's responses to the comments regarding §90.403 and §90.404 are listed with this adoption. The commission is making corresponding revisions to §90.603 and §90.604 for consistency purposes, with the affected subsections and figures listed after the responses concerning the parallel provisions contained in §90.403 and §90.404.

In reference to §90.403(c)(37), the commenter believes that the proposed language regarding the location of the confidentiality notice is in conflict with provisions of the Texas Local Government Code and the Texas Property Code. While §191.007(c) of the Texas Local Government Code requires that "a clearly identifying heading . . . be placed at the top of the first page," it prefaces that statement with an exception deferring to Texas Property Code, §11.008. Section 11.008(c) requires that the Notice of Confidentiality Rights appear "on the top of the first page of the instrument." The commenter recommends that the phrase "either above or directly below the document heading" be deleted from §90.403(c)(37)(A). The commission agrees with the suggested change and has deleted this phrase from §90.403(c)(37)(A), as well as the corresponding language in §90.603(b)(15)(A) and (f)(35)(A). Consequently, the removal of this phrase will result in the preceding provisions having no change from the current text. Furthermore, in the figures for 7 TAC §§90.404(a)(8), 90.604(a)(12), and 90.604(a)(16), the Notice of Confidentiality Rights has been relocated to the very top of the document above the heading, as to best reflect "the top of the first page" language contained in HB 2061.

Also concerning subsection (c)(37) of §90.403, the commenter recommends that the date reference of "January 1, 2004," be changed to March 28, 2007, which is the effective date of HB 2061. Although the commission agrees that the January 1, 2004, date should be removed from §90.403(c)(37), the commission does not believe that any other date reference is necessary. At the time of this rule's initial proposal, the date was needed in order to establish the future effective date of the authorizing legislation. With HB 2061, the effective date is in the past, and thus, all future contracts subject to HB 2061 will be required to contain the confidentiality notices. Therefore, the commission agrees to delete "On or after January 1, 2004," from §90.403(c)(37), and §90.603(b)(15) and (f)(35), but declines to add "March 28, 2007."

Regarding Figure: 7 TAC §90.404(a)(8), the commenter believes that the proposed notice "does not substantially comply with the promulgated text in new Section 11.008(c), Property Code, added by House Bill 2061, because the notice in proposed Figure: 7 TAC §90.404(a)(8) refers only to the document on which it is located and not, as required by Section 11.008(c), to 'any instrument that transfers an interest in real property'." The commenter recommends that the text of the Notice of Confidentiality Rights contained in Figure: 7 TAC §90.404(a)(8) be revised by replacing "THIS DOCUMENT" with "ANY DOCUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY." Although the commission would prefer this revision, the commission is unable to adopt the suggested language at this meeting, as the corresponding rule text of the notices had been proposed with no changes. In order to maintain consistency between the model clauses contained in the rule text and the notices included in the figures, the commission declines to adopt the suggested language at this time. The commission believes that the current notice language substantially complies with HB 2061, and is returning the same text to the figures. At a future meeting, however, the commission plans on proposing the commenter's recommended Notice of Confidentiality Rights so that it may be uniformly revised within the model clauses and the model contracts.

These amendments as well as all of the rules contained in Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapter A - F, for those licensees utilizing the model provisions, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until January 1, 2008, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of previous amendments to §§90.105, 90.403, 90.404, 90.503, 90.504, 90.603, and 90.604 in the *Texas Register* on March 9, 2007 (32 TexReg 1232), listed the agency's implementation date as October 1, 2007. Given these additional amendments, some required by recent legislation, the agency intends to provide licensees until January 1, 2008, for compliance.

The amendments are adopted under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 342.

§90.603. Model Clauses.

(a) Generally. These model clauses are the plain language rendition of contract clauses that have typically been stated in technical legal terms. Nothing in this regulation prohibits a contract from including provisions that provide more favorable results for the borrower than those that would result from the use of a model clause.

(b) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that does not allow for withdrawals or multiple advances:

(1) Identification. The model identification clause reads: Figure: 7 TAC §90.603(b)(1) (No change.)

(2) Definitions. The model definitions section reads:

(A) ""Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale."

(3) Construction of improvements. The model clause regarding construction of improvements reads: "You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner."

(4) Contract price. The model clause establishing the contract price reads: "I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. $_____) when the Work is completed."

(5) Transfer of lien. The model clause regarding the transfer of lien reads: "You transfer to Lender all of your rights and interests in this Contract."

(6) Completion by contractor, but not lender. The model clause specifying that the lender is not responsible for completing the construction reads: "You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work."

(7) Partial lien. The model clause regarding a partial lien reads: "If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price."

(8) Charges and extras. The model clause regarding charges and extras reads: "All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money."

(9) Receipts and releases. The model clause regarding receipts and releases reads: "If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier."

(10) No work commenced. The model clause specifying that no work has commenced prior to execution of the contract reads: "This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work."

(11) Trustee's duties. The model clause regarding the trustee's duties reads:
Figure: 7 TAC §90.603(b)(11) (No change.)

(12) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule (16 C.F.R. §433), it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(13) Owner and contractor responsible. Texas Property Code, §41.007 specifies that a home improvement contract must contain a notice specifying that the owner and the contractor are responsible for meeting the terms of the contract. This notice must appear either in this contract or in the residential construction contract. The Property Code requires that the notice must be conspicuously printed, stamped, or typed in a font size equal to at least 10-point boldfaced type or computer equivalent and appear next to the owner's signature line on the contract. The wording of the notice is specified by the Property Code, which uses the pronouns "you" and "your" to refer to the owner. Licensees are encouraged to explain in the contract, prior to the notice, that "you" and "your" refer to the owner in this notice. The parties' signatures must be notarized. The licensee may use a different notary acknowledgment without having to submit the contract to the agency as a non-standard contract. The notice specifying that the owner and the contractor are responsible for meeting the terms of the contract, the model explanatory clause regarding the use of "you" and "your" in the notice, and the signature blanks read:
Figure: 7 TAC §90.603(b)(13) (No change.)

(14) Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads:
Figure: 7 TAC §90.603(b)(14) (No change.)

(15) Notice of confidentiality rights disclosure. The security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

(c) For a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that does not allow for withdrawals or multiple advances:

(1) Identification. The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. The model clause identifying the pronouns used for the borrower and the lender reads:
Figure: 7 TAC §90.603(c)(1) (No change.)

(2) Truth in Lending Act (TILA) disclosure box. The model Truth in Lending Act (TILA) disclosure box reads:
Figure: 7 TAC §90.603(c)(2) (No change.)

(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Security for payment. The model clause relating to the security for payment reads: "Liens created in the Contract secure this Note."

(5) Definitions. The model definitions section reads:

(A) ""Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale dated _____ between Contractor and Owner.

(D) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(E) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular periodic payments and to pay the debt in full not later than _____."

(6) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(7) Late charge. The model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(8) After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A creditor may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(9) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(10) Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(c)(10)(A) (No change.)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(c)(10)(B) (No change.)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(c)(10)(C) (No change.)

(11) Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(12) Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A creditor may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(13) Default. The model provision specifying the conditions causing default reads:
Figure: 7 TAC §90.603(c)(13) (No change.)

(14) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.603(c)(14) (No change.)

(15) Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:
Figure: 7 TAC §90.603(c)(15) (No change.)

(16) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(17) Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(18) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this loan agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this loan agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the loan agreement."

(19) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(20) Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this loan agreement to the extent not prohibited by applicable law. These expenses include, for example, reasonable attorneys' fees."

(21) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(22) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than applicable law allows."

(23) Savings clause. The savings model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with any law will be modified to comply with the law. The rest of the loan agreement remains valid."

(24) Prior agreements. For loan agreements exceeding $50,000.00, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written loan agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this loan agreement. Any change to this loan agreement must be in writing. Both you and I have to sign written agreements."

(25) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this loan agreement."

(26) Complaints and inquiries notice. The model complaints and inquiries notice reads: "The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."

(27) Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."

(28) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule (16 C.F.R. §433), it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(29) Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads:
Figure: 7 TAC §90.603(c)(29) (No change.)

(d) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that allows for withdrawals or multiple advances:

(1) Identification. The model identification clause listing the date and the account or contract number reads:
Figure: 7 TAC §90.603(d)(1) (No change.)

(2) Definitions. The model definitions section reads:

(A) ""Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts

secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property."

(3) Construction of improvements. The model clause regarding construction of improvements reads: "You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner."

(4) Contract price. The model clause establishing the contract price reads: "I agree to pay, or cause to be paid, to you, or to your order, the sum of _____ dollars (U.S. $_____) when the Work is completed."

(5) Note payable to lender. The model clause specifying that the note is payable to the lender reads: "In exchange for money from the Lender to you, I have signed a Note to the Lender in the amount of _____ dollars (U.S. $_____)."

(6) Lien to secure note. The model clause regarding security for the note reads: "To secure the amounts Lender provides to you, and the interest payable to Lender, I give you, and you transfer to Lender, the Lien. The Note is secured by a deed of trust, which I will sign. The deed of trust will renew and extend the Lien created by this Contract."

(7) Transfer of lien. The model clause regarding the transfer of lien reads: "You transfer to Lender all of your rights and interests in this Contract."

(8) Exceptions to conveyance and warranty. Any exceptions to conveyance and warranty should be specified in the contract. The model clause regarding the exceptions to conveyance and warranty reads: "The exceptions to conveyance and warranty are: (List any exceptions to conveyance and warranty.)"

(9) Completion by contractor, but not lender. The model clause specifying that the lender is not responsible for completing the construction reads: "You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work."

(10) Partial lien. The model clause regarding a partial lien reads: "If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price."

(11) Charges and extras. The model clause regarding charges and extras reads: "All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money."

(12) Receipts and releases. The model clause regarding receipts and releases reads: "If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier."

(13) No work commenced. The model clause specifying that no work has commenced prior to execution of the contract reads: "This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work."

(14) Owner's promises and rights. The model clause regarding the owner's promises and rights reads:
Figure: 7 TAC §90.603(d)(14) (No change.)

(15) Owner's duties. The model clause regarding the owner's duties reads:
Figure: 7 TAC §90.603(d)(15) (No change.)

(16) Contractor's duties. The model clause regarding the contractor's duties reads:
Figure: 7 TAC §90.603(d)(16) (No change.)

(17) Contractor's rights. The model clause regarding the contractor's rights reads:
Figure: 7 TAC §90.603(d)(17) (No change.)

(18) Trustee's duties. The model clause regarding the trustee's duties reads:
Figure: 7 TAC §90.603(d)(18) (No change.)

(19) General provisions. The model clause regarding general contract provisions reads:
Figure: 7 TAC §90.603(d)(19) (No change.)

(20) Preservation of claims and defenses. In accordance with the Federal Trade Commission's Holder in Due Course Rule (16 C.F.R. §433), it is an unfair or deceptive act or practice to take or receive a consumer credit contract in connection with the sale or lease of goods or services to consumers that does not include the following notice. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(21) Owner and contractor responsible. Texas Property Code, §41.007 specifies that a home improvement contract must contain a notice specifying that the owner and the contractor are responsible for meeting the terms of the contract. The notice must appear in either this contract or the residential construction contract. The Property Code requires that the notice must be conspicuously printed, stamped, or typed in a font size equal to at least 10-point boldfaced type or computer equivalent and appear next to the owner's signature line on the contract. The wording of the notice is specified by the Property Code, which uses the pronouns "you" and "your" to refer to the owner. Licensees are encouraged to explain in the contract, prior to

the notice, that "you" and "your" refer to the owner in this notice. The parties' signatures must be notarized. The licensee may use a different notary acknowledgment without having to submit the contract to the agency as a non-standard contract. The notice specifying that the owner and the contractor are responsible for meeting the terms of the contract, the model explanatory clause regarding the use of "you" and "your" in the notice, and the signature blanks read:
Figure: 7 TAC §90.603(d)(21) (No change.)

(22) Assignment. The parties may use a different assignment or a separate document for the assignment without having to submit the contract to the agency as a non-standard contract. The model assignment in which the contractor transfers and assigns the lien to the lender reads:
Figure: 7 TAC §90.603(d)(22) (No change.)

(e) For a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that allows for withdrawals or multiple advances:

(1) Identification. The model identification clause lists the account or contract number, the name and address of the creditor or lender, the date of the note, the name and address of the borrower, the property address, the principal amount, and the terms of payment. The model clause identifying the pronouns used for the borrower and the lender reads:
Figure: 7 TAC §90.603(e)(1) (No change.)

(2) Truth in Lending Act (TILA) disclosure box. The model Truth in Lending Act (TILA) disclosure box reads:
Figure: 7 TAC §90.603(e)(2) (No change.)

(3) Itemization of amount financed box. The itemization of amount financed box is not required if the licensee provides the borrower with a good faith estimate or a settlement statement as permitted by the Truth in Lending Act. An itemization of amount financed box which complies with Regulation Z is considered to be in compliance with this paragraph and will not require a non-standard submission.

(4) Security for payment. The model clause relating to the security for payment reads: "The Deed of Trust and the Lien created in the Contract secure this Note."

(5) Definitions. The model definitions section reads:

(A) ""Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property."

(6) Promise to pay. One permissible change to the model language for the scheduled installment earnings method would be to allow partial prepayments of the principal during the term of the loan. This variation on the scheduled installment earnings method would allow periodic reductions of the principal balance by partial prepayments. This variation would allow reductions of the principal balance that were not originally scheduled. The model clause options for the borrower's promise to pay read:

(A) For contracts using the scheduled installment earnings method: "I promise to pay the Total of Payments to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(B) For contracts using the true daily earnings method: "I promise to pay the cash advance plus the accrued interest to the order of you. (The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date).) I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule."

(7) Late charge. The model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(8) After maturity interest. The model clause specifies the maximum interest rate allowed by law for after maturity interest. A creditor may always choose a lower rate. The model provision for after maturity interest reads: "If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That

interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due."

(9) Prepayment clause. The model prepayment clause options read:

(A) For contracts using the scheduled installment earnings method: "I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(B) For contracts using the true daily earnings method: "I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled."

(10) Finance charge earnings and refund method. The model provision options specifying the finance charge earnings and refund method read:

(A) For contracts using the scheduled installment earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(e)(10)(A) (No change.)

(B) For contracts using the scheduled installment earnings method with prepayments option - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(e)(10)(B) (No change.)

(C) For contracts using the true daily earnings method - Section 342.301 rate loans, the model language reads:
Figure: 7 TAC §90.603(e)(10)(C) (No change.)

(11) Deferment. The model provision regarding deferment reads: "If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules."

(12) Fee for dishonored check clause. The model clause specifies the maximum allowable dishonored check fee. A creditor may always choose a lesser amount. The model fee for dishonored check provision reads: "I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately."

(13) Default. The model provision specifying the conditions causing default reads:
Figure: 7 TAC §90.603(e)(13) (No change.)

(14) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.603(e)(14) (No change.)

(15) Credit insurance. If single premium credit insurance is offered, a permissible change to the disclosure can be to offer a single charge for the entire term of the loan. The term for the single premium charge should be shown for the original term of the loan, unless otherwise specified. The licensee has the option of including language that reads: "The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium." The industry standard regarding the relationship between total past due premiums and the first month's premium in this equation appears to be four times. However, if a different time frame is more appropriate, that time frame may be used. The model credit insurance disclosure box reads:
Figure: 7 TAC §90.603(e)(15) (No change.)

(16) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it."

(17) Statement of truthful information. The model provision specifying that the borrower gave truthful information reads: "I promise that all information I gave you is true."

(18) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate, and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law. If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement."

(19) No waiver of lender's rights. The model provision expressing no waiver of the lender's rights reads: "If you don't enforce your rights every time, you can still enforce them later."

(20) Collection expenses. The model collection expenses clause reads: "If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees."

(21) Joint liability. The model provision providing for joint liability reads: "I understand that you may seek payment from only me without first looking to any other Borrower."

(22) Usury savings. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(23) Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(24) Prior agreements. For loan agreements exceeding $50,000.00, this notice must be boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material to be conspicuous. The model clause stating that there are no prior agreements between the parties regarding the loan agreement reads: "This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements."

(25) Note secured by deed of trust. The model clause stating that the note is secured by a deed of trust reads: "In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note."

(26) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(27) Complaints and inquiries notice. The model complaints and inquiries notice reads: "The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579."

(28) Collateral. The model clause regarding the collateral reads: "The Property is subject to the Contract lien. I am responsible for all obligations in this Note."

(29) Preservation of claims and defenses. The notice regarding the preservation of claims and defenses reads: "NOTICE. ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

(30) Signature blocks. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The licensee may also provide additional signature lines for witness signatures. The model signature block reads:
Figure: 7 TAC §90.603(e)(30) (No change.)

(f) For a Chapter 342, Subchapter G second lien home improvement loan deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(1) Definitions. The model definitions section reads:

(A) ""Borrower" is _____. Borrower's address is _____.

(B) "Contractor" is _____. Contractor's address is _____.

(C) "Lender" is _____. Lender's address is _____.

(D) "Trustee" is _____. Trustee's address is _____.

(E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").

(F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.

(G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.

(H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. $_____) plus interest.

(I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).

(J) "Applicable Law" means all controlling applicable federal, state, and local law.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Deed of Trust.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest" means any party that has taken title to the Property.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."

(S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property."

(2) Transfer of rights in the property. The model provision regarding a transfer of rights in the property reads:
Figure: 7 TAC §90.603(f)(2) (No change.)

(3) Payment of late charges and prepayment. The model provision regarding the payment of late charges and prepayment of principal and interest reads:
Figure: 7 TAC §90.603(f)(3) (No change.)

(4) Funds for escrow items. The model provision regarding the funds for escrow items reads:
Figure: 7 TAC §90.603(f)(4) (No change.)

(5) Charges and liens. The model provision regarding charges and liens reads:
Figure: 7 TAC §90.603(f)(5) (No change.)

(6) Property insurance. The model provision regarding property insurance reads:
Figure: 7 TAC §90.603(f)(6) (No change.)

(7) Preservation, maintenance, protection, and inspection of the property. The model provision regarding preservation, maintenance, protection, and inspection of the property reads: "I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs."

(8) Protection of lender's interest in the property and rights under the deed of trust. The model provision regarding protection of the lender's interest in the property and rights under the deed of trust reads:
Figure: 7 TAC §90.603(f)(8) (No change.)

(9) Assignment of miscellaneous proceeds and forfeiture. The model provision regarding the assignment of miscellaneous proceeds and forfeiture reads:
Figure: 7 TAC §90.603(f)(9) (No change.)

(10) Forbearance not a waiver. The model provision specifying that the borrower is not released from liability if the lender modifies the payment schedule reads: "If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later."

(11) Joint and several liability, deed of trust execution, successors obligated. The model provision regarding joint and several liability and specifying that the person who signs the contract grants his ownership in the property and binds his successors and assigns reads:
Figure: 7 TAC §90.603(f)(11) (No change.)

(12) Usury savings clause. The model usury savings clause reads: "I do not have to pay interest or other amounts that are more than Applicable Law allows."

(13) Mailing of notices to borrower. The duty to give notice is satisfied when it is mailed by first class mail. The model provision regarding the mailing of notices to the borrower reads: "Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it."

(14) Application of law. The model clause specifying that federal law and Texas law apply to the contract reads: "Federal law and Texas law apply to this Loan Agreement."

(15) Rules of construction. The model provision regarding rules of clause construction reads:
Figure: 7 TAC §90.603(f)(15) (No change.)

(16) Loan agreement copies. The model provision specifying that the lender will give the borrower a copy of all signed documents at the time the loan agreement is made reads: "At the time the Loan Agreement is made, Lender will give me copies of all documents I sign."

(17) Due on sale clause, notice of intent to accelerate, and notice of acceleration. The model provision regarding the due on sale clause, notice of intent to accelerate and notice of acceleration reads: "If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits. If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement."

(18) Lender, contractor, and borrower's promises and agreements. The model provision regarding the lender, contractor, and borrower's promises and agreements reads: "LENDER, CONTRACTOR, AND I PROMISE AND AGREE:".

(19) Acceleration and remedies. The model provision regarding acceleration and remedies reads:
Figure: 7 TAC §90.603(f)(19) (No change.)

(20) Power of sale. The model provision regarding the power of sale reads:
Figure: 7 TAC §90.603(f)(20) (No change.)

(21) Borrower's right to reinstate after acceleration. The model provision regarding the borrower's right to reinstate after acceleration reads:
Figure: 7 TAC §90.603(f)(21) (No change.)

(22) Assignment of rents, appointment of receiver, and lender in possession. The model provision regarding the assignment of rents, appointment of receiver, and the lender in possession reads: "As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received."

(23) Release. The model provision regarding the release of the lien securing the loan agreement reads: "Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien."

(24) Trustees and trustee liability. The model provision regarding trustees and trustee liability reads:
Figure: 7 TAC §90.603(f)(24) (No change.)

(25) Assignment of contractor's lien, and commencement of work. The model provision regarding the assignment of the contractor's lien and specifying that no work was commenced before the contract was executed reads: "Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed."

(26) Subrogation. The model provision regarding subrogation reads: "If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment."

(27) Partial invalidity. The model provision regarding what happens if the sums secured and other charges violate applicable law reads: "If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt."

(28) Renewal and extension. The model provision regarding the renewal and extension of the note secured by the deed of trust reads: "The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note."

(29) Sale of loan, change of loan servicer, notice of grievance, and lender's right to comply. The model provision regarding the sale of the loan, change of loan servicer, notice of grievance, and the lender's right to comply reads: "A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section. No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law. Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law. Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement. Lender's right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement."

(30) Hazardous substances. The model provision regarding hazardous substances reads:
Figure: 7 TAC §90.603(f)(30) (No change.)

(31) Lender's rights and Borrower's responsibilities. The model provision regarding the lender's rights and the borrower's responsibilities reads:
Figure: 7 TAC §90.603(f)(31) (No change.)

(32) Default. The model provision regarding the borrower's default reads: "Any default of my agreements with Lender will be a default of this Deed of Trust."

(33) Request for notice of default and foreclosure under superior mortgages or deeds of trust. The model provision regarding the lender and borrower's request for notice of default and foreclosure under superior mortgages or deeds of trust reads:
Figure: 7 TAC §90.603(f)(33) (No change.)

(34) Signature blocks. The parties' signatures must be notarized. The licensee may use a different notary acknowledgment without having to submit the deed of trust to the agency as non-standard. Documents for a home improvement loan on a homestead must be signed at the office of the lender, an attorney at law, or a title company. If this provision applies, the model clause, "This document must be signed at the office of the Lender, an attorney at law, or a title company" should appear above the signature of the borrower. The model provision regarding signature blocks reads:
Figure: 7 TAC §90.603(f)(34) (No change.)

(35) Notice of confidentiality rights disclosure. The security document must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) be in at least 12-point boldfaced type or 12-point uppercase lettering; and

(C) be substantially similar to the required notice or disclosure under Texas Property Code, §11.008(b). The model notice of confidentiality rights reads: "NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS."

§90.604. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien home improvement contracts plain language model clauses:

(1) Regulation Z of the Truth in Lending Act provides a right of rescission form that must be provided to consumers in a transaction involving the consumer's principal dwelling. The TILA right of rescission form for use in a transaction involving the consumer's principal dwelling reads:
Figure: 7 TAC §90.604(a)(1) (No change.)

(2) If the Texas constitutional homestead requirements apply to the transaction, the licensee must add a clause regarding notice of cancellation, place of singing the contract, and the five-day waiting period. The model clause regarding the notice of cancellation, place of signing the contract, and the five-day waiting period reads:
Figure: 7 TAC §90.604(a)(2) (No change.)

(3) Article 16, Section 50(a)(5) of the Texas Constitution provides that a contract for improvements on a homestead must expressly provide the owner with notice of the owner's right to cancel the contract. The model notice regarding the owner's right to cancel the contract reads: "NOTICE OF RIGHT TO CANCEL. THE OWNER MAY CANCEL THE CONTRACT WITHOUT PENALTY OR CHARGE WITHIN THREE DAYS AFTER THE EXECUTION OF THE CONTRACT BY ALL PARTIES, UNLESS THE WORK AND MATERIAL ARE NECESSARY TO COMPLETE IMMEDIATE REPAIRS TO CONDITIONS ON THE HOMESTEAD PROPERTY THAT MATERIALLY AFFECT THE HEALTH OR SAFETY OF THE OWNER OR PERSON RESIDING IN THE HOMESTEAD AND THE OWNER OF THE HOMESTEAD ACKNOWLEDGES SUCH IN WRITING."

(4) Texas Business and Commerce Code, Chapter 39 requires that notice must be given to the consumer regarding the consumer's right to cancel certain types of transactions. If this chapter is applicable, the notice that must be given by the licensee must appear in immediate proximity to the consumer's signature, or on the front page of the receipt if a contract is not used. The notice must be in boldfaced type and must be the equivalent of at least 10 points in the Times typeface. The statement to which the notice must be substantially similar reads: "YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(5) Texas Business and Commerce Code, Chapter 39 also requires, if applicable, that a completed notice of cancellation form in duplicate be attached to the loan documents or receipt of the consumer transaction. This notice must be easily detachable from the contract or receipt, be in the same language as the contract or receipt, be in boldfaced type, and be the equivalent of at least 10 points in the Times typeface. The required notice of cancellation reads:
Figure: 7 TAC §90.604(a)(5) (No change.)

(6) The licensee may add information related to information set forth in the model clauses that is not otherwise prohibited by law.

(7) The licensee may substitute another term for "Lender" or "Borrower" that has the same meaning, or use pronouns such as "you," "we," and "us."

(8) The model clauses may be presented in any order, and may be combined or further segregated at the licensee's option.

(9) The licensee may insert descriptive headings or number provisions.

(10) The licensee may change the case of a word if otherwise permitted by the Texas Finance Code.

(11) The licensee may make other changes that do not affect the substance of the disclosures.

(12) A sample model contract that does not allow for withdrawals or multiple advances is presented in the following example.
Figure: 7 TAC §90.604(a)(12)

(13) A sample model promissory note that does not allow for withdrawals or multiple advances is presented in the following example.
Figure: 7 TAC §90.604(a)(13) (No change.)

(14) A sample model contract that allows for withdrawals or multiple advances is presented in the following example.
Figure: 7 TAC §90.604(a)(14) (No change.)

(15) A sample model promissory note that allows for withdrawals or multiple advances is presented in the following example.
Figure: 7 TAC §90.604(a)(15)

(16) A sample model deed of trust that allows for withdrawals or multiple advances is presented in the following example.
Figure: 7 TAC §90.604(a)(16)

(b) A licensee has considerable flexibility to arrange the format of the model form if the revised format does not significantly adversely affect the substance, clarity, or meaningful sequence of the disclosures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: June 29, 2007
For further information, please call: (512) 936-7640

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.505

The Public Utility Commission of Texas (commission) adopts an amendment to §25.505, relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region. The amendment is adopted with changes to the proposed text as published in the March 9, 2007 issue of the *Texas Register* (32 TexReg 1176). The amendment revises certain disclosure requirements for entity-specific information received by the Electric Reliability Council of Texas (ERCOT) in its capacity as an independent organization, under Chapter 39 of the Public Utility Regulatory Act (PURA). The new amendment revises the disclosure require-

ments for some entity-specific information by delaying the disclosure date from 30 days to 60 days after the day for which the information was collected. The amendment also establishes an event trigger that requires more expedited disclosure of some information if the market clearing price for energy (MCPE) or the market clearing price for capacity (MCPC) exceed a certain level. Finally, the amendment establishes deadlines for the implementation of the new provisions. The amendment provides additional certainty to market participants who will know in advance the conditions under which their specific information will be disclosed. Furthermore, the commission anticipates that the resulting market transparency will enhance its ability to perform its market oversight duties and result in a more competitive environment within the ERCOT power region.

PURA Chapter 39, adopted in 1999, established the framework to implement a competitive electricity market in Texas. In adopting PURA Chapter 39, the Legislature announced the legislative policies and purposes that supported the implementation of customer choice. The Legislature specifically indicated, in PURA §39.001(a), that Chapter 39 was enacted "to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry." Recognizing that the electricity market in ERCOT would not be fully competitive at the time the retail market opened in January 2002, the commission adopted certain provisions to help protect the public interest during the transition to competition. Subsequent to January 2002, the commission has reviewed its actions and has adopted various rules and approved various ERCOT Protocol revisions concerning the operation of the ERCOT markets.

Most recently, in Project Number 31972, *Rulemaking on Wholesale Electric Market Power and Resource Adequacy in the ERCOT Power Region*, the commission, among other issues, found that the establishment of a market transparency mechanism was necessary to enhance competitive electricity markets in ERCOT. In particular, the commission stated that:

"To further the 'sunshine policy' that the commission announced in Docket Number 24770 related to hockey-stick bidding, the commission is requiring additional public disclosure of disaggregated pricing data by market participants. Greater transparency of pricing information should deter generation companies from offering unreasonably high prices and should permit broader scrutiny of questionable prices by other market participants and the general public. This broad scrutiny should help in the identification of prices that are the result of market manipulation or market power abuse. These two issues (the level of the price caps and the disclosure rules) are interrelated in their effect on the ERCOT market, and they are a part of a coherent approach to modifying the ERCOT market rules." (31 TexReg 7319).

As envisioned by the commission, this higher level of transparency was needed to balance policy decisions that also allowed the level of the offer cap to be raised gradually from the then-current level of $1,000 per mega-watt hour (MWh) for energy, or $1,000 per mega-watt (MW) for capacity, to an eventual level of $3,000 per MWh or per MW. In markets under the Federal Energy Regulatory Commission's (FERC's) jurisdiction, the highest offer cap remains $1,000 per MWH or MW. The increase in the offer cap in ERCOT was intended to provide an incentive for investment in additional generation capacity needed to meet the growing demand for electricity in the region. The expedited disclosure of pricing information was intended to prevent this greater pricing freedom from being used to engage in market manipulation or market power abuse and to provide assurance to consumers and market participants that the ERCOT market prices were the result of market conditions and not the abuse of market power.

Accordingly, the commission, in Project Number 31972, adopted rules that required ERCOT to disclose information as specified in §25.505. Section 25.505(f)(3) was challenged before the Third Court of Appeals in separate appeals of that rule by Constellation Energy Commodities Group, Inc. (Constellation) and by the City of Garland's public power utility. As a part of the appeals, the Austin Court of Appeals issued an order staying the implementation of the transparency provisions of §25.505(f)(3). (*See* Order (Sep. 29, 2006) (Stay Order), *Constellation Energy Commodities Group, Inc. v. Public Util. Comm'n*, No. 03-06-00552-CV (Tex. App. - Austin) (pending) (*Constellation*). *See also* the similar Order (Sep. 29, 2006) *City of Garland v. Public Utility Comm'n*, No. 03-06-00571-CV (Tex. App. - Austin) (pending) (*Garland*). In a subsequent order on January 17, 2007, the Court, with the agreement of all parties, lifted the stay as it related to the 48-hour disclosure provision found in §25.505(f)(3), but continued the stay as applied to the other disclosure requirements of the section. The Court's order did not stay the effectiveness of other portions of the rule, including the provisions allowing the offer cap to be increased in March 2007. As a result, the ERCOT offer cap was raised to $1,500 per MWh or MW on March 1, 2007 and is scheduled to further increase to $2,250 per MWh or MW on March 1, 2008 and to $3,000 per MWh or MW two months after the full implementation of the Texas Nodal market design, currently scheduled for December 2008.

Rather than waiting for further consideration of this issue by the court, the commission decided that it should re-examine the previously-adopted disclosure requirements and initiated this rulemaking project for that purpose. The commission is pleased that the court has lifted the stay related to the 48 hour disclosure provisions. Because of the rapid availability of this information to the public, the commission finds that it can delay the disclosure of some entity-specific information. Accordingly, the commission decides to delay the disclosure provisions for entity-specific information from 30 days, as found in the current version of §25.505, to 60 days. In order to address unusual events when prices may spike to high levels, the adopted amendment includes an event trigger that requires the public release of entity-specific information within seven days after the day for which the information is submitted. The commission finds that the disclosure of this limited type of entity-specific information is sufficient to retain public confidence in the ERCOT markets.

As adopted, the amendment is necessary to meet the legislative goal of protecting the public interest during the transition to and in the establishment of a fully competitive electric power industry. The amendment also is necessary to protect customers from unfair, misleading or deceptive practices in the ERCOT market. The amendment is considered a competition rule and is subject to judicial review as specified in PURA §39.001(e). The amendment is adopted under Project Number 33490.

Comments on the published proposal were received from Constellation Energy Commodities Group, Inc. (Constellation); the Electric Reliability Council of Texas, Inc. (ERCOT); and the Office of Public Utility Counsel (OPC). Reply comments were received from Constellation, Reliant Energy Power Supply, LLC. (Reliant), and OPC. There was no public hearing on the requested amendment because no written request for such a hearing was filed with the commission by the deadline stated in the notice of proposed amendment.

Authority to adopt amendment

Constellation stated that it has consistently and emphatically advocated market transparency, but it raised a number of objections to the proposed amendment, including objections that the commission lacked the statutory authority to adopt the disclosure requirements contained in the proposed amendment. Constellation noted that FERC had recently rejected an attempt to require disclosure of disaggregated offer information in less than a six-month period in wholesale markets over which it has jurisdiction. Constellation also cited the provision currently contained in the ERCOT Protocols that protects certain entity-specific information for 180 days. Constellation asserted that the commission lacks the statutory authority to evaluate confidentiality claims in a rulemaking and to require public disclosure of allegedly confidential information without following the requirements of the Public Information Act, (PIA), Texas Government Code §§552.001 - 552.353. To support its claims, Constellation cited language contained in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d. 668, (Tex. 1976), cert. denied, 430 U.S. 931 (1977), and *Envoy Medical Systems LLC and Independent Review Incorporated v. State of Texas*, 108 S.W.3d 333 (Tex. App. - Austin 2003, no pet.). Constellation interpreted the PIA as generally allowing only the Attorney General or the courts to make a determination of whether information filed with an agency qualifies for one of the exceptions to public disclosure established by the PIA, citing *City of Garland v. Public Utility Commission*, 165 S.W.3d 814 (Tex. App. - Austin 2005, pet, denied). An exception to that procedure would allow the agency, in its adjudicative role in a contested case, to determine whether information filed under a protective order was in fact confidential or privileged or should be made public, subject to a party's opportunity to seek injunctive-type relief prior to disclosure. Constellation argued that a rule is not the appropriate procedure to address disclosure requirements because determinations of confidentiality are fact-specific and case-specific and should only be made in a contested case. In addition to the PIA, Constellation also cited the following legal provisions as requiring the commission to protect information that an entity claims is confidential:

1) Texas rules on privilege and protective orders, as recognized in §2001.083 and §2001.091 of the Administrative Procedure Act, Texas Government Code §§2001.001 - 2001.902 (APA), and incorporated by PURA §11.007(a);

2) various PURA provisions including PURA §§14.154, 17.051, 32.101, 39.001(b), 39.155(a), and 39.351; and

3) Constitutional protections against the taking of property.

In reply comments, OPC disagreed with Constellation's assessment of the statutory authority to adopt the proposed amendment. OPC stated that, although the FERC had rejected a proposal to require disclosure in less than 180 days, it did so because the applicant had failed to meet its burden of proof. The FERC Order noted that FERC did not necessarily oppose in principle a shortened lag time for the release of information including generator, load and financial bid and offer data. Additionally, the proposed disclosure requirement was dismissed "without prejudice." OPC also disputed that the PIA requires a contested case before the commission can change the disclosure requirements contained in the ERCOT Protocols. OPC pointed out that ERCOT did not conduct a contested case proceeding before it adopted the initial ERCOT Protocols or when it revised those requirements. OPC disputed the relevance of the *Industrial Foundation* and *Envoy Medical* case cited by Constellation because those cases concerned an attempt by an agency to expand the exceptions contained in the PIA, rather than a ruling by an agency that a PIA exception did not apply. Further, OPC argued that the offer information in question does not qualify as trade secrets under the PIA. It cited court decisions that trade secrets do not include information as to single or ephemeral events such as one day or day ahead offers into the ERCOT market. OPC responded to Constellation's implied argument that the ERCOT Protocols disclosure provision preempts the commission's authority by citing to PURA §39.151, which requires that the ERCOT Protocols be consistent with commission rules and to a court case affirming the commission's authority to require changes to the ERCOT Protocols. OPC argued that the PURA references cited by Constellation were taken out of context and are clearly not applicable to the proposed amendment. Citing the commission's duty, under PURA §39.001, to protect the public interest during the transition to a competitive electric market, OPC asserted that the proposed disclosure of information is consistent with protecting the public from market manipulation and market power abuse.

Commission response

The commission disagrees with Constellation's arguments concerning the commission's authority to require disclosure of offer information. The commission notes that the confidentiality of information provided to ERCOT is currently addressed in §1.3 of the ERCOT Protocols. Pursuant to Protocol §1.3.1.1, much of the information addressed in the proposed rule is treated as confidential. However, Protocol §1.3.3 states that the protection that applies to the confidential information expires 180 days after the applicable operating day. The time limit on the protection provided by the Protocols indicates that such protection is not permanent. If the information was a trade secret *per se*, the disclosure of which would reveal business strategies or business formulas, it would presumably remain confidential indefinitely. Because the Protocols allow disclosure after 180 days, the information is currently available to competitors after that time. During the past five years, ERCOT has routinely released the information after 180 days. Potential competitors therefore already have access to this information, on a delayed basis, and can perform the assessment of their competitors' bidding strategy that Constellation says it fears. Therefore, any potential impact from the disclosure of the information has already occurred, and the rule does not create the threat alleged by Constellation.

The commission agrees with OPC that recent decisions by FERC on the issue of information disclosure do not prevent the commission from adopting different requirements for ERCOT. As discussed by OPC, the FERC decisions were based upon a failure to meet the applicable burden of proof and did not purport to foreclose additional consideration at a future time, as demonstrated by the notation that the order was issued "without prejudice" to further consideration. Additionally, FERC did not address disclosure standards in ERCOT or preempt other regulatory jurisdictions, like the commission, from adopting shorter time periods for information disclosure in markets under their jurisdiction. Finally, the ERCOT wholesale market is not subject to regulation by FERC, and its decisions would not be binding on the commission. To the extent that Constellation was using the FERC decision as a policy rationale for a longer period of confidentiality rather than as a basis for asserting the commission lacks statutory authority for the amendment, its position is discussed later in this preamble.

Contrary to the arguments from Constellation, the commission may make this decision in a rulemaking proceeding and need not conduct a contested case for such purpose. The APA §2001.003(6) defines a "rule" as "a state agency statement of general applicability that implements, interprets, or prescribes law or policy." The courts have recognized that, "unless mandated by statute, the choice to proceed by general rule or by ad hoc adjudication is one that lies primarily in the informed discretion of the agency." *State Board of Insurance v. Deffebach*, 631 S.W.2d 794, 799 (Tex. Civ. App. - Austin 1982, writ ref'd n.r.e.) There is no statutory provision directing the commission to use a contested case proceeding in order to determine the confidentiality of the general classes of information addressed in the proposed amendment. Because the current disclosure requirements are addressed in the ERCOT Protocols, which are similar to rules, and because these disclosure requirements will affect all market participants in the same manner, the commission determines that it is particularly appropriate to use the rulemaking process to address the issue in this instance. Cases cited by Constellation for the proposition that an agency cannot *expand* the list of exemptions to public disclosure are not relevant to the question of whether an agency can establish a rule related to a schedule for the disclosure of information.

The commission disagrees with comments that the final Third Court decision in the *City of Garland* case prevents the commission from addressing disclosure standards for market participants or requires the commission to adopt a different standard for public power utilities. The opinion in *City of Garland* only addressed the cities' claims of confidentiality of certain contract information under §552.133 of the Texas Government Code. The Court, in a footnote, stated, "We express no opinion regarding the Commission's power to determine for itself other claims of confidentiality, including assertions based upon other TPIA exceptions." Therefore the decision does not preclude the commission from determining whether market information submitted to ERCOT should be disclosed to the public.

The commission agrees with OPC that Constellation's arguments misapply relevant provisions of PURA and other laws. The provisions of the APA cited by Constellation concerning "the rules of privilege recognized by law" in APA §2001.083 only apply in a contested case. Similarly, the discovery provisions contained in APA §2001.091 apply in a contested case. The commission is adopting these disclosure provisions as a matter of the routine operation of the wholesale market, and provisions of law relating to the recognition of certain privileges in contested cases are simply not on point.

The PURA provisions cited by Constellation also are not applicable, as noted by OPC. PURA §14.154 concerns records obtained from affiliates of a public utility related to transactions with the public utility. Constellation is not a Texas public utility nor an affiliate of a Texas public utility and the information sought to be disclosed concerns offers to ERCOT rather than sales to a public utility. This proposed amendment does not address reporting requirements for qualifying facilities, exempt wholesale generators or power marketers, so PURA §17.051 is not applicable to this amendment. Similarly, the information addressed in the amendment is not information that is required to be filed with the commission pursuant to PURA §39.155 and §39.351, but is information submitted to ERCOT as part of an entity's voluntary participation in the ERCOT markets. PURA §32.101 concerns information held by an electric utility related to individual customers and their expected load and usage. Since Constellation is not an electric utility and the information does not concern individual customers, the provision does not apply to the information required to be disclosed by the amendment. Accordingly, none of these provisions are applicable to this amendment.

The commission also agrees with OPC that requiring disclosure of information does not conflict with the public policy expressed in PURA §39.001(b)(4), which provides that the commission should "ensure the confidentiality of competitively sensitive information." As noted by OPC, in applying this provision, the commission must also consider its duty under PURA §39.001(a) to "protect the public interest during the transition to and in the establishment of a fully competitive electric power industry." Additionally, the commission notes that PURA §39.101(a)(1) establishes that customers are entitled to "safe, reliable and reasonably priced electricity," and that PURA §39.101(b)(6) provides that customers are entitled "to be protected from unfair, misleading, or deceptive practices." Chapter 39 includes other provisions that give the commission significant oversight authority with respect to ERCOT and responsibilities for policing market power abuses in the wholesale market. The commission has previously held that these provisions allow the commission to take action to ensure safe, reliable and reasonably priced for customers and to protect customers from unfair, misleading and deceptive practices in the wholesale market, and the courts upheld that interpretation in *TXU Generation Co. L.P. v. Public Utility Commission of Texas*, 165 S.W.3d 821 (Tex. App. - Austin, 2005, pet. denied). In balancing these competing concerns, the commission finds that the amendment does ensure the confidentiality of sensitive information, but only for the period of time in which it is competitively sensitive, while also enabling the commission to protect both customers and the public interest.

The commission also disagrees with Constellation's constitutional claims. Constellation cites case law establishing the factors considered in determining whether an unconstitutional taking of property has occurred. OPC has provided comments disputing that the information at issue is a trade secret due to its connection to an ephemeral event. However, even if the information is a trade secret, disclosure does not result in a taking because Constellation has not met the requirement to establish a "reasonable investment-backed expectation" in the non-disclosure of the information. Given that the ERCOT Protocols allow disclosure after 180 days, Constellation would not have a "reasonable investment-backed expectation" that the information would never be disclosed. Further, since the ERCOT Protocols can be amended by market participants or by the commission, Constellation has no "reasonable investment-backed expectation" that these disclosure times could not be changed. Instead, its "reasonable investment-backed expectation" should be based upon the form of disclosure required by the ERCOT Protocols or the commission's rules at the time the information is submitted. Since the commission is not attempting to implement this amendment on a retroactive basis, the adoption of the amendment does not interfere with Constellation's reasonable expectations and is, therefore, not a taking of any property interest. The commission rejects Constellations argument on constitutional grounds.

Sixty-day publication amendment

Constellation recommended that the commission not require disclosure of disaggregated information in fewer than 90 days. In support of its position, Constellation has referred to the general disclosure practice before FERC and stated that FERC has consistently required a minimum six-month delay before disclosing

disaggregated offer information. Furthermore, Constellation referred to statements by the Department of Justice that the incremental benefit of increased public dissemination of firm- and transaction-specific information may be small relative to the risks that the information could be used for coordination of bids among market participants.

Constellation also stated that the harm could be reduced by adopting the changes it previously proposed for the existing section, which included amending the section to require public disclosure of the data at issue in no fewer than 90 days, along with setting the event trigger level at the higher of 100 times the prevailing Houston Ship Channel (HSC) gas price or 70% of the current offer cap. Constellation opined that these changes, would reduce (though not eliminate) competitive harm to market participants compared to implementation of the amendment as published.

Constellation asserted that early disclosure would result in competitive harm. Constellation explained that early disclosure would result in highly public calls for action before the independent market monitor (IMM) and the commission had completed an investigation and that such action could jeopardize the investigation as well as tarnish the reputation of a market participant that acted properly. Constellation also stated that the amendment could lead to disclosure of information that the IMM would want kept confidential as part of an ongoing investigation. In support of its position, Constellation frequently referred to statements by commissioners and concluded that early disclosure may have negative impacts on the IMM's market monitoring responsibilities or the commission's enforcement activities. Constellation also questioned statements by other market participants concerning disclosure and noted an apparent inconsistency on this issue in statements by Reliant in a filing in Docket Number 29298, *Quarterly Wholesale Electricity Transaction Reports for 2003*, compared to its statements in Project Number 31972.

Constellation stated that the decision in *City of Garland*, prevented the commission from requiring disclosure of information that a public power utility has determined is confidential. As a result, Constellation suggested that a public power utility could appeal the adoption of the amendment and prevent the disclosure of the public power utility's ERCOT information. Constellation was concerned about the discriminatory effect that could result from different disclosure requirements applying to privately-owned utilities and the public power utilities with which they compete. Constellation argued that the difference in treatment would harm competition, in conflict with PURA §39.001(b)(4), which requires the commission to "protect the competitive process in a manner that ensures the confidentiality of competitively sensitive information."

OPC disagreed with the proposal to increase the disclosure deadline from 30 days to 60 days. Instead, OPC urged that the deadlines for disclosure be shortened to 48 hours. This deadline would track the disclosure requirements in the Australian market upon which the ERCOT market is based.

In reply comments, OPC argued that the commission should not defer to the FERC's decision on disclosure in other electricity markets because of the unique features of the ERCOT market. Unlike the wholesale markets under FERC jurisdiction, which include capacity payments to assure resource adequacy, the commission has adopted an energy-only market in ERCOT. The FERC decision does not address disclosure in an energy-only market.

OPC noted that the commission based the ERCOT market design on the Australian energy-only resource adequacy mechanism. OPC stated that the Australian market requires publication of disaggregated offer curves 24 hours after the market has closed. OPC observed that in the approximately six years of its operation, the Australian market has been successful, and has seen improved efficiency, improved reliability, and higher private investment. OPC also stated that in FERC proceedings, small generators had filed comments supporting more rapid disclosure of disaggregated information and cited economic game theory as supporting its claims that disclosure encourages active buyer participation as a means of preventing collusive behavior.

OPC also contended that more timely release of the data ("market or price transparency") encourages investment by providing load-serving entities (LSEs) with the knowledge that market clearing prices in an energy-only market are the product of supply and demand, not market power abuse. As a result, LSEs would feel comfortable entering into long-term commitments for new generation. OPC also averred that market transparency promotes market efficiency because the published information will hinder anti-competitive behavior.

In reply comments, Reliant stated that it stands by its comments in Project Number 31972 and asks the commission to incorporate them by reference. Reliant also requested that the commission reject the disclosure requirements Constellation suggested in its initial comments in this proceeding for the same reason they were rejected in Project Number 31972. Reliant also asserted that Constellation was misguided in using Reliant's comments from Project Number 31972.

Reliant noted that Constellation's argument for using a 90-day disclosure requirement relied on a comparison with other markets. Reliant opined that these markets do not represent relevant comparisons to the ERCOT situation. Price volatility, disclosure, and pricing safeguards, Reliant continued, have been addressed differently in those markets for various reasons. Reliant noted that some of those markets include forward capacity markets in which prices are disclosed immediately following the forward auctions. Reliant also noted that none of the markets referenced by Constellation include the ERCOT approach to scarcity pricing in an energy-only market.

Reliant asserted that the commission's approach provides several benefits including the market's ability to self-police. Reliant stated that Constellation's proposal allows for delays before disclosure, which is contrary to the commission's "sunshine policy" and should be rejected.

Commission response

In this argument Constellation fails to acknowledge that the bidding information is already disclosed after six months by ERCOT protocol. Thus the information is not confidential per se. The question to be answered is of a generic nature - that is, at what time should the bidding data ERCOT receives in its public auctions be available to the public? As OPC mentioned previously in these comments, some market participants in Project Number 31972 advocated 48-hour and 30-day disclosure deadlines for the release of the ERCOT data. Obviously these participants adjudged that the more timely release of data would not pose competitive harm to themselves; otherwise they would be urging steps against their self interests. It is unreasonable and contrary to basic economic theory that in a competitive market, participants will act against their self-interest.

The commission disagrees with Constellation's assertion that the release of confidential information, as proposed in the amendment, harms competition and that the proposed rule amendments would result in the publication of confidential information. On the contrary, the commission finds arguments by OPC and Reliant persuasive and convincing. The commission also relies on the experience in other markets, particularly the Australian market where such information is disclosed within 48 hours and, as explained by Peter Adams, a monitor of the Australian electricity market, such disclosure has not resulted in harm to the market as claimed by Constellation. In addition, the commission believes that the provision for a 60-day delay in disclosure in this amendment to §25.505 will ensure that there will be no harm to the market as a result of information disclosure. Furthermore, the commission finds that the benefit of disclosing information within the proposed timeline greatly outweighs any concerns about potential harm discussed by Constellation. As a result, the commission declines to amend the rule as Constellation has proposed.

As noted previously, since the start of retail open access, the commission has viewed the level of the offer cap and the appropriate amount of information disclosure to be interrelated. Because the commission has decided to increase the offer caps to encourage greater investments in generation and load resources in Texas, it believes that such increases must be accompanied by increased disclosure of the information that affects the operation of the ERCOT market. The increased disclosure will help to ensure that price changes are the result of a properly functioning competitive market and not the result of market power abuse or other market manipulation. The commission agrees with comments suggesting that it should require a more rapid disclosure of certain market information.

By operating under the existing ERCOT Protocols, the market participants have implicitly agreed that their claims of confidentiality expire over time. The question faced by the commission in this project is whether 90 days, as proposed by Constellation, is an appropriate period of time, or whether the public interest is better served by mandating shorter disclosure timelines. As was the case in Project Number 31972, the commission received conflicting suggestions on this issue, ranging from disclosure after only 48 hours to disclosure pursuant to the current 180-day time period in the Protocols. Based upon those comments, the commission determined in that project that it was appropriate to limit the period of time during which some information is considered competitively sensitive. As a result, in Project Number 31972 the commission adopted a 30-day disclosure requirement for disaggregated information.

However, the commission is also sympathetic to the concerns expressed by Constellation that the time period before disclosure should be long enough to avoid encouraging collusion or other market manipulative activities. Except for intervals when an event trigger is reached, the commission agrees that, for most of the information subject to the rule, disclosure after 30 days may not be necessary. Therefore, while the commission cannot agree with the 90-day delay as proposed by Constellation, the commission determines that the appropriate delay for disclosure of individual offer curves, except when the event trigger is implemented, should be 60 days. The commission finds that this delay in disclosure will not cause a loss of public confidence because much of the time prices in the ERCOT-administered markets are not subject to the type of price spikes that could create an impression of market power abuses or other market failures. In some cases, however, prices may spike to higher than usual levels and cause public concern and the need for more public information. To address such events, the proposed amendment includes an event trigger that would require the public release of entity-specific information on a much quicker timeframe. The proposed amendment requires that, when the trigger is exceeded, the portion of every market participant's offer curve that is equal to or exceeds the trigger level will be disclosed seven days after the day for which the information is submitted. The commission finds that the disclosure of this limited type of entity-specific information is sufficient to retain public confidence in the ERCOT markets while minimizing early disclosure of entity-specific information.

Constellation's concern about possible future actions of public power utilities, such as that of the City of Garland, is conjecture at this time. Neither Garland nor any other public power utility has filed comments in this proceeding objecting to the disclosure of information required by the amendment. In Project Number 31972, some public power utilities stated that disclosure after 60 days would not raise competitive concerns. In asserting any rights it may have under PIA §552.133, a public power utility would have to act in good faith. The commission refuses to assume that public power utilities will object to the 60-day disclosure requirement when there is no indication to support that assumption. Accordingly, at this time, Constellation's concerns about possible harm to competition due to different treatment of public power utilities are simply conjecture.

In support of its claims, Constellation presented an affidavit from Leslie Dedrickson, one of its Vice Presidents. After first disclosing that Constellation no longer owns any generation assets in ERCOT, the affidavit complains about alleged competitive problems for generators caused by the amendment. In the affidavit, Constellation argued that less than a 90-day disclosure period is not necessary because the commission, the IMM, and ERCOT already have near-immediate access to the information, and the entity-specific information is available to the public at a later date. Constellation asserted that there is no benefit, but rather detriment, to release of entity-specific information under the short timeframes in the proposed amendment. Constellation further stated that buyers' and sellers' behaviors change when they obtain time-sensitive data that allows them to know the position of their potential counterparties. Constellation provided examples to make its points and concluded that in the presence of additional information, sellers likely will offer a higher price and buyers will also change their bid prices.

Commission response

While the commission agrees with Constellation that the commission, the IMM, and ERCOT have access to the disaggregated information, that should not be confused with market transparency, which is a core feature of any workably competitive market. Market transparency through a sunshine policy is an additional deterrent to market manipulation and complements the work by the IMM, and the commission. Such a sunshine policy creates a level playing field for all market participants, assuring that all participants have access to the data. The market participants, who have a financial interest in the operation of markets, may even be able to identify potentially anticompetitive strategies that might not be apparent to the IMM or the commission. Market transparency thus assists the commission, the IMM and ERCOT in performing their duties. However, the commission agrees that information disclosure should be delayed long enough to minimize any harm that could be caused if disaggregated information is disclosed too early.

The commission believes that the amendment achieves a reasonable balance between the needs of market participants for timely release of information and the needs of suppliers to maintain confidentiality of disaggregated information long enough to avoid possible harm. Contrary to Constellation's comments, the fact that access to disaggregated information is provided to all buyers and sellers should facilitate more informed decision-making by all market participants and should result in more competition in the ERCOT electricity market. In particular, it should further encourage buyers to carefully assess the risks they are facing if they choose to rely on the ERCOT-administered energy market rather than exploring other options. Although disclosure may cause changes in buyers' and sellers' behaviors, there is no indication that such changes will necessarily result in higher prices. Indeed, increased competition and better decision-making by buyers should result in lower prices. The commission believes the disclosure of disaggregated information should be delayed long enough to avoid possible harms to the market or market participants. Therefore, the commission is amending the section to delay disclosure of disaggregated information for 60 days, which is long enough to prevent any serious harm to those whose information is disclosed, while still providing the public interest benefits that are generated by market transparency.

In its affidavit, Constellation emphasized the importance of not disclosing any disaggregated information before a particular season is completed, asserting that market conditions are seasonal. It argued that conditions like operational problems, interruptions in supply, and effects of contract discontinuations or breaches could persist for longer than 60 days. Constellation also stated that disclosure in 90 days would cause similar types of harm, but such harm would occur less frequently, and to a lesser magnitude than if disclosure occurred in 60 days. A 90-day lag period comes closer to the end of a season, even in Texas, according to Constellation. A 90-day disclosure period would also come after or closer to, depending on the circumstance, the end of the other market conditions described by Constellation. To avoid competitive harm, however, Constellation asserted that a lag of at least 180 days is necessary.

Commission response

The commission does not agree that the alleged "seasonality of data" demonstrates that disclosure should be delayed to 90 or 180 days as advocated by Constellation. To the extent that there are significant seasonal fluctuations, market participants currently have access to over five years of information and can discern such differences by reviewing that data. There are several other reasons that concerns raised regarding seasonal impacts are not significant. First, there is no guarantee that contracts will be seasonal. In fact, there are many contracts that may not last beyond a single month. Second, market strategies need not remain constant over such a long period as 90 days. Even assuming that there are identifiable 90-day seasons and bidding strategies, under a 60-day disclosure period, the season would be 2/3 completed before the first information was released. A competitor would have little time left within which to identify the bidding strategy and benefit from such information. Further, as noted previously, competitors could simply change their bidding strategies more frequently if they felt disadvantaged by the disclosure. Concerning the other conditions identified by Constellation, if those conditions persisted for as long as 60 days it is quite likely that they would be publicly reported or otherwise known even in the absence of the disclosure requirement. For example, plant operational problems and supply problems often become the subject of news reports and become widely known in much less than 60 days, particularly if they result in the closure of the plant or significant employee reductions. In short, Constellation has failed to demonstrate that the 60-day disclosure requirement would have the effect on competition that it claimed.

Constellation's affidavit provided several examples that it claimed demonstrate harm to the market from early disclosure of disaggregated information. It argued that disclosure sooner than 90 days would allow market participants to assess when they can offer higher prices to specific entities because of particular situations, such as a buyer being short on supply. It claimed that such action by market participants would harm Constellation and the market as a whole. Constellation asserted that public disclosure of information, such as balancing energy bid curves, could reveal information affecting bilateral markets and could reveal the effective heat rate of a unit. Constellation suggested that the ancillary service market would be affected because a sophisticated entity could use the information to determine that a bilateral contract for ancillary services has terminated. Constellation also opined that the disclosure of information could also affect derivative products in the electric market associated with the underlying energy. According to Constellation, the amendment would create a high and costly risk with respect to generators' involvement in the coal, oil, and gas markets for obtaining fuel to produce the electricity they sell in ERCOT because the fuel suppliers could use the data to gain a clear understanding of the fuel needs and positions of a particular entity. The disclosure of suppliers' costs and positions provides leverage to those who sell products such as Renewable Energy Credits (RECs) to Constellation and could compromise Constellation's ability to hedge its costs.

Commission response

As in other parts of the affidavit, Constellation raises many concerns without providing any solid examples to substantiate its claims. Many of the harms that are alleged to result from early disclosure are, in reality, a result of any disclosure, regardless of the extent of the delay. That is, the alleged harms claimed by Constellation (*e.g.*, disclosure of information that could be used to calculate a unit's heat rate) could also occur under the current 180-day disclosure practiced in ERCOT. Other statements made by Constellation would be valid if the commission ordered disclosure of disaggregated information after 48 hours, as is the case in the Australian electricity market, but such statements are not applicable under the commission proposal for such disclosure to take place 60 days from the operating day, which is 30 times longer than what is practiced in the Australian electricity market. Therefore, the commission disagrees with Constellation. The commission also notes that Constellation's affidavit reveals that it no longer owns any generation assets in ERCOT. Constellation's claims regarding the potential impact of the amendment on generators apparently are not supported by generators who are active in the ERCOT market since other generators have not filed similar comments on the proposed amendment to encourage the commission to further delay disclosure. In fact, entities such as Austin Energy and Texas Electric Cooperatives, Inc. (TEC), who have historically been very concerned about the confidentiality of their disaggregated information, agreed in comments in Project Number 31972 that a 30-day to 60-day disclosure would not raise competitive concerns. Furthermore, other entities such as Reliant or OPC have argued for even faster disclosure of disaggregated information to market participants to facilitate competition.

To show the effect of 60-day release of disaggregated information, Constellation proposed a hypothetical example involving a power generation company (PGC) able to transact business with only a few counterparties and that has one of its 500 MW peaking generators trip at the beginning of a week of record high temperatures during the summer months, as the result of a serious equipment malfunction that it estimates could take more than 60 days to repair. Based on this example, Constellation claimed that, by knowing the PGC's predicament, some sellers could change their negotiating strategy and insist on prices, terms, and conditions that are less favorable to the PGC than they would absent the accelerated dissemination of such information.

Commission response

The commission disagrees with this argument. Constellation's example is based upon an unsupported assumption that the only way in which the PGC's predicament would become known is through the disclosure required by the amendment. The commission does not agree that this assumption is realistic. Further, 60 days should be long enough for the PGC in the above example to find various supply alternatives if fixing the equipment is not practical within 60 days. While a single supplier may not be able to replace the entire 500 MW of lost capacity, the PGC in question should be able to obtain blocks of purchased power from different sources to address its immediate need. The ERCOT electricity market is becoming more competitive over time, creating more alternatives to address any temporary and unexpected problems experienced by a PGC. Because no current generators in ERCOT provided comments or reply comments supporting Constellation's argument, the commission declines to change the amendment based upon Constellation's conjecture.

Constellation stated that the disclosure of disaggregated market data in only seven days pursuant to the event trigger needs to be an "extreme event" trigger. To support this statement, Constellation presented a calculation based upon certain assumptions to calculate the frequency with which the MCPE has hit 50 times the price of gas delivered at the Houston Ship Channel. Constellation concluded that between January 1, 2006, and March 12, 2007: (1) the MCPE in all zones hit the trigger 82 times; (2) the MCPE in at least one zone hit the trigger 124 times; and (3) the MCPE in any zone achieved the trigger during 69 out of 436 days. By way of comparison, ERCOT posted prices exceeding the $300 transparency cap 178 times between January 1, 2006 and September 30, 2006. These numbers show that bids would hit the proposal's trigger frequently, as was true of the transparency cap that the commission repealed. Constellation claimed that the event trigger will prevent a PGC from recovering all of its costs, particularly for a peaking gas unit, including start up, fuel, and other costs. Furthermore, Constellation asserted that the trigger as currently formulated would act in a manner similar to the transparency cap.

In reply comments, Reliant noted that, based upon Constellation's figures, the implementation of the event trigger 82 times during the period January 1, 2006 through March 7, 2007 represented approximately 0.20% of the 41,856 intervals during that period. Similarly, if it was implemented 124 times, that would represent approximately 0.30% of the intervals. Reliant also calculated that, if Constellation's proposed event trigger was adopted, it would be implemented in only 0.03% and 0.05% of the intervals, respectively.

Commission response

The commission disagrees with Constellation that the event trigger is only intended to capture the most extreme events. Rather, the objective is to provide information to the public concerning whether the prices in the ERCOT market are reflecting competitive conditions or attempted market manipulation. In the absence of scarcity conditions, the MCPE generally should be at levels below the event trigger, as demonstrated by Constellation's own data. When gas prices are low but the MCPE exceeds the event trigger, the results generally will be due to scarcity or market manipulation. The event trigger provides information concerning the number of times the event trigger is exceeded and the number of offers that exceed that level. The event trigger thus provides important information to the public concerning the operation of the electricity market in ERCOT regardless of whether prices are due to extreme events. Finally, as Reliant's calculations demonstrate, the event trigger would be implemented in approximately 0.20% to 0.30% of the intervals, if the past is indicative of the future. This is sufficiently infrequent to indicate that it would apply to unusual events without impacting the normal operation of the ERCOT market. There is no need to further limit disclosure in the manner caused by adoption of Constellation's proposed event trigger.

The commission also disagrees with Constellation's comments concerning the prior $300 threshold transparency cap. The transparency threshold is distinguishable because it resulted in next-day disclosure of the supplier's name and it had no relationship with actual production costs facing market participants. In contrast, the event trigger is set at a level which is fifty times the Houston Ship Channel natural gas price index. Because it is related to price of natural gas, which is the fuel used most of the time by the marginal unit that sets the MCPE in the ERCOT market, it accounts for changes in the cost of generation caused by fluctuations of the cost of fuel. Such a generous threshold is high enough to cover total variable and operating costs of any existing generating unit in ERCOT, including inefficient peakers. Furthermore, such an event trigger will result in disclosure after seven days, rather than 24 hours.

Constellation stated that the disclosure contemplated by the amendment would allow other market participants to ascertain the practices Constellation has developed and to "free ride" on Constellation's investment. In addition, Constellation claimed that analysis of the disclosed information would also allow competitors to analyze Constellation's bidding, scheduling, and business strategies.

Commission response

The commission disagrees with Constellation. As noted earlier, Constellation does not provide any solid examples to substantiate its claims, and it has failed to demonstrate how the amendment creates any alleged harm because there is already five years of information available for competitors to review to create the same analysis. Further, its claims are not supported by similar claims or calls for longer disclosure periods from other generators actually participating in the ERCOT market. As noted earlier, entities such as Austin Energy and TEC stated in comments in Project Number 31972 that a 30-day to 60-day disclosure would not raise competitive concerns. In addition, comments in this rulemaking process by Reliant and OPC rebut claims made by Constellation and encourage the commission to accelerate disclosure of disaggregated information to a shorter period than what was originally proposed by the commission.

The commission strongly disagrees with Constellation's assertions that the proposed disclosure would cause financial harm to

Constellation, counterparties, and ultimately Texas consumers. In fact, the commission determines that the improved market transparency, which will result from the proposed information disclosure, will facilitate more efficient operation of the competitive electricity market in ERCOT. This will ultimately benefit both market participants and Texas customers.

Use of the phrase "offer curve" and June 1, 2007 implementation deadline

In its initial comments, ERCOT suggested that the commission replace the phrase "offer curve" with the phrase "price-quantity offer pair" in §25.505(f)(3)(A)(ii) and §25.505(f)(3)(B)(ii). ERCOT stated that to meet the effective date of June 1, 2007 for the new disclosure described in this rule, ERCOT would need to implement a manual process to satisfy the disclosure requirement. ERCOT stated that it could accomplish this task, but would need a minor change in the draft language that would greatly reduce the work required while still achieving the commission's objective. Unless this change is made, ERCOT stated that it would be required to make software enhancements that would require four months to implement. Other options ERCOT proposed to simplify disclosure include posting only the QSE name and corresponding offer prices above the trigger (but not the quantity), or disclosing the full offer curves of the QSEs exceeding the trigger. ERCOT posited that these alternatives were not as good in meeting the intent of the commission. ERCOT stated it is also studying the impact the proposed rule language might have in the nodal environment and will keep the commission apprised of its findings.

Both OPC and Constellation did not oppose replacing the phrase "offer curve" with the phrase "price-quantity offer pair" in §25.505(f)(3)(A)(ii) and §25.505(f)(3)(B)(ii) as proposed by ERCOT.

Constellation also raised concerns regarding the proposed June 1, 2007, implementation date and concluded that full implementation by that date may not be easy to achieve.

Commission response

The commission agrees with the clarification suggested by ERCOT and is replacing the phrase "offer curve" with the phrase "price-quantity offer pair" in §25.505(f)(3)(A)(ii) and §25.505(f)(3)(B)(ii).

The commission agrees with Constellation that full implementation is not possible to achieve by June 1, 2007. The commission is also aware of ERCOT's workload and revises the implementation date of the disclosure provision. Therefore, the commission amends §25.505(f)(3)(A)(ii) to require ERCOT to implement the new disclosure provisions of the rule beginning with information submitted after September 1, 2007.

Event trigger

Constellation recommended that the definition of the event trigger be modified to reflect only an "extreme event" trigger of the greater of 100 times the price of gas as delivered to the HSC or 70% of the current offer cap. In support of its position, Constellation stated that the proposed event trigger is too low and would reveal the entire bid curve above the trigger level, resulting in too much information being disclosed too frequently. Constellation contended that, for the period between January 1, 2006 and March 12, 2007, the event trigger would have been engaged 69 to 124 times, if the trigger had been in place during this time. Constellation argued that the trigger mechanism should only be activated by truly exceptional market events, such as extreme price spikes without obvious purpose. If the trigger is set too low, Constellation argued that it would operate as a "shame cap" and undermine the commission's energy-only approach to resource adequacy.

OPC noted that the language in the rule would not have revealed the bidding behavior of TXU during the summer of 2005, the time period where the IMM has determined that TXU was engaging in anti-competitive bidding and increased costs to the market by approximately $70 million over a four-month period. OPC opined that a more realistic multiplier should be 35, which would establish an event trigger that would provide market transparency to questionable bids in the ERCOT market.

In its reply comments, OPC noted that Constellation argued that the commission's event trigger captures too many market events and is contrary to the commission decision in Project Number 31972 that a transparency cap was no longer needed. OPC asserted that this is not the case because the commission determined that the required greater market transparency would "deter generation companies from offering unreasonably high prices." Order, Project Number 31972, (31 TexReg 7319) September 8, 2006.

In its reply comments, OPC noted that an event trigger should act as a "shame cap" to deter market manipulation. OPC argued that, in the past, a transparency cap has proven to be effective in deterring market manipulation. The event trigger is important to prevent inefficient markets which lead to excessive rates to consumers. OPC noted that any relief the load serving entities receive will be almost two years after the questionable events occurred because it is unlikely that an end to the harmful behavior will occur before an investigation is completed. Moreover, OPC opined that it is extremely unlikely that any refund the retail electric providers (REPs) or LSEs receive as a result of a finding of market manipulation will be returned to their customers who paid the higher rates. An event trigger that more effectively tracks questionable bids would promote the public interest in efficient markets. OPC contended that Constellation's proposal works contrary to that public interest and should not to be adopted by the commission.

Reliant, in its reply comments, questioned the reasonableness of the changes proposed by Constellation concerning the event trigger and recommended that the commission reject such proposed changes. Reliant referred the commission to a report presented by the ERCOT IMM at the March 7, 2007 commission Open Meeting when the IMM used a threshold of "20 times the natural gas price index" to evaluate the reasonableness of price spike intervals. Reliant, while not expressing any opinion about the reasonableness of the threshold used by the IMM, reminded the commission that the two thresholds recommended by the IMM and Constellation are "two apparent book-ends" to be considered by the commission.

In reply comments, Reliant noted that, as previously discussed, the commission's proposed event trigger would have been implemented in approximately 0.20% to 0.30% of the 41,856 intervals during the period from January 1, 2006 through March 7, 2007. Reliant stated that Constellation's proposed level for the event trigger would significantly reduce transparency in the ERCOT market relative to the proposed amendment. Reliant also concluded that Constellation's goal is to make the market less transparent. Therefore, Reliant encouraged the commission to

opt for more market transparency and reject Constellation's proposal.

Commission response

Regarding event trigger calculation formula, the commission is neither convinced that it should raise the threshold value, as recommended by Constellation, nor is it convinced that it should lower it, as proposed by OPC. It has been the commission's intention to provide more market transparency consistent with its decision to allow for the offer cap level to increase by 200% and reach $3,000 by early 2009. This greater latitude in price offers warrants much more transparency than before to retain public confidence in the ERCOT market. In addition, the commission believes that an event trigger set at a high level (50 times the price of natural gas) would ensure that the most expensive units within ERCOT will be economical to operate without resulting in disclosure of the names or offers of bidders. Furthermore, the commission notes that the event trigger and the information disclosed by its operation depends to a large degree on the decisions of market participants about their offer prices, a decision that they will make based on their business strategies and the recognition that there is a risk of a portion of their offer curves. Providing such disclosure, as indicated by Reliant, will allow market participants to make intelligent decisions regarding available prices. Therefore, the commission disagrees with both OPC and Constellation who recommended either lowering or increasing values for event trigger, respectively, and declines to change the language in the published amendment.

While OPC's comments regarding the event trigger are very helpful, the commission does not agree to reduce the event trigger to 35 times the HSC natural gas price index for each operating day. As was mentioned above, the commission believes that the event trigger should be set at a high level to cover the most expensive units in ERCOT; based on both the efficiency of generating plants in the markets and the need for them to recover start-up costs. The proposed event trigger based on 50 times the HSC natural gas price index for each operating day meets that objective. As a result, the commission declines to amend the rule as OPC has proposed.

Re-establishment of Regulatory Methods

OPC recommended that certain amendments be added to the rule to deter market manipulation because the market transparency proposed in the rule is an insufficient deterrent. OPC recommended that the commission reinstitute the $1,000/MWh or $1,000/MW offer cap that had been in effect prior to March 1, 2007 and reinstitute the modified competitive solution method (MCSM) previously used in ERCOT.

Constellation responded to OPC's arguments and noted that the recommendations to reinstitute MCSM and the $1,000 offer cap were beyond the scope of this proceeding because those subjects are addressed in §25.502, relating to *Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas*, and not in §25.505, which is the only section addressed in the notice for the amendment. Constellation also cited to the commission Order in Project Number 31972, in which the commission found that MCSM had served its purpose and could be repealed and stated that the increase in the offer cap was necessary to address resource adequacy in ERCOT.

Commission response

The commission disagrees with OPC's recommendations to reestablish certain regulatory methods that expired 90 days after the implementation and operation of §25.505(f). The commission concludes that the disclosures required by the proposed amendment are important measures that will improve the efficiency of the wholesale market, and that the higher offer caps are a key element of the scarcity pricing modifications that the commission recently adopted. With the strong growth in demand that has been experienced in ERCOT, the commission concludes that it needs to leave the scarcity pricing mechanism in place, to permit better price signals for generation developers. The re-establishment of such regulatory methods is inconsistent with the operation of an energy-only mechanism approved earlier by the commission, provided appropriate levels of market transparency are required. If the proposed disclosure requirements are stayed or reversed as a consequence of judicial review, the commission reserves the right to revisit this determination. As a result, the commission declines to amend the rule as OPC has proposed.

Other proposed changes to the published amendment

Constellation recommends that the definition of "event trigger' be revised to state that it applies "for each interval." Constellation also suggests that the language in §25.505(f)(3)(A) and (B) be clarified by including language that the requirement to publish the offer curve applies "for balancing energy service and each ancillary service" and only "for that service and that interval."

Commission response

The commission agrees to clarify the definition of event trigger in §25.505(b) by including "for each interval" as requested by Constellation. The commission also agrees to clarify the language in §25.505(f)(3)(A) and (B) by including "for balancing energy service and each ancillary service" and "for that service and that interval" as proposed by Constellation.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this amendment, the commission makes other minor modifications for the purpose of clarifying its intent.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA §35.004, which requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, predatory, or anticompetitive; PURA §39.001, which establishes the legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry; PURA §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity and to protection from unfair, misleading, or deceptive practices, and gives the commission the authority to adopt and enforce rules to carry out these provisions; PURA §39.151, which requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures; and PURA §39.157, which directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 35.004, 39.001, 39.101, 39.151, and 39.157.

§25.505. Resource Adequacy in the Electric Reliability Council of Texas Power Region.

(a) General. The purpose of this section is to prescribe mechanisms that the Electric Reliability Council of Texas (ERCOT) shall establish to provide for resource adequacy in the energy-only market design that applies to the ERCOT power region. The mechanisms are intended to encourage market participants to build and maintain a mix of resources that sustain adequate supply of electric service in the ERCOT power region, and to encourage market participants to take advantage of practices such as hedging, long-term contracting between market participants that supply power and market participants that serve load, and price responsiveness by end-use customers.

(b) Definitions. The following terms, when used in this section, shall have the following meanings, unless the context indicates otherwise:

(1) Generation entity--an entity that owns or controls a generation resource.

(2) Event trigger--a calculated value for each interval that is equal to 50 times the Houston Ship Channel natural gas price index for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour (MW/h). The event trigger shall be applied solely for the purpose of establishing the timing of the publication of certain market data and shall not be construed to establish the legitimacy of any offer, whether such offer is less than, equal to, or higher than the event trigger.

(3) Load entity--an entity that owns or controls a load resource, including, but not limited to, a load acting as a resource (LaaR) or a balancing up load (BUL), as those terms are defined in the ERCOT Protocols.

(4) Resource entity--an entity that is a generation entity or a load entity.

(c) Statement of opportunities (SOO). ERCOT shall publish a SOO that provides market participants with a projection of the capability of existing and planned electric generation resources, load resources, and transmission facilities to reliably meet ERCOT's projected needs. A SOO published in even-numbered years shall use a ten-year study horizon and be published by December 31 of those years. A SOO published in odd-numbered years shall use a five-year study horizon and be published on or around October 1 of those years. ERCOT shall prescribe reporting requirements for generation entities and transmission service providers (TSPs) to report to ERCOT their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also shall prescribe reporting requirements for load entities to report to ERCOT their plans for adding new load resources or retiring existing load resources.

(d) Projected assessment of system adequacy (PASA). Beginning no later than October 1, 2006, unless otherwise specified below, ERCOT shall provide market participants with information to assess the adequacy of resources and transmission facilities to meet projected demand in the following two reports:

(1) Each month, ERCOT shall publish a Medium-Term PASA for each week of the subsequent three years beginning with the week after the Medium-Term PASA is published. At a minimum, each Medium-Term PASA shall include the following information:

(A) Load forecast by ERCOT zone or area;

(B) Ancillary service requirements;

(C) Transmission constraints; and

(D) Aggregated information on the availability of resources, by ERCOT zone or area, including load resources.

(2) Each day, ERCOT shall publish a Short-Term PASA for each hour for the seven days beginning with the day the Short-Term PASA is published.

(A) At a minimum, each Short-Term PASA shall include the following information:

(i) Load forecast by ERCOT zone or area;

(ii) Ancillary service requirements;

(iii) Transmission constraints; and

(iv) Aggregated information on the availability of resources, by ERCOT zone or area, including load resources.

(B) By October 1, 2006, ERCOT shall file at the commission a plan to incorporate the impact of transmission constraints into its Short-Term PASA at a later date.

(e) Filing of resource and transmission information with ERCOT. ERCOT shall prescribe reporting requirements for resource entities and TSPs for the preparation of PASAs. At a minimum, the following information shall be reported to ERCOT:

(1) TSPs shall provide ERCOT with information on planned and existing transmission outages.

(2) Generation entities shall provide ERCOT with information on planned and existing generation outages.

(3) Load entities shall provide ERCOT with information on planned and existing availability of LaaRs, specified by type of ancillary service, and BULs.

(4) Generation entities shall provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:

(A) the net dependable capability of generation resources;

(B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and

(C) output limitations on generation resources that result from fuel or environmental restrictions.

(5) Load serving entities (LSEs) shall provide ERCOT with complete information on load response capabilities that are self-arranged or pursuant to bilateral agreements between LSEs and their customers.

(f) Publication of resource and load information in ERCOT markets. To increase the transparency of the ERCOT-administered markets, ERCOT shall post at a publicly accessible location on its website, beginning no later than October 1, 2006, the information required pursuant to this subsection, unless a different date is specified by a paragraph of this subsection.

(1) The following information in aggregated form, for each settlement interval and for each area where available, shall be posted two calendar days after the day for which the information is accumulated.

(A) Quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves.

(B) Self-arranged energy and ancillary capacity services, for each type of service.

(C) Actual resource output.

(D) Load and resource output for all entities that dynamically schedule their resources.

(E) During the operation of the market under a zonal market design, scheduled load and actual load. During the operation of the market under a nodal market design, firm scheduled load, scheduled load with "up to" limits on congestion charges, and actual load.

(2) During the operation of the market under a nodal market design, the following day-ahead market information in aggregate form shall be posted two calendar days after the day for which the information is accumulated: load bids, including virtual loads, in the form of day-ahead bid curves, and cleared load.

(3) The following information in entity-specific form, for each settlement interval, shall be posted as specified below.

(A) During the operation of the market under a zonal market design:

(i) Portfolio offer curves for balancing energy and for each type of ancillary service, for each area where available, shall be posted 60 days after the day for which the information is accumulated beginning September 1, 2007, except that, for the highest-priced offer selected or dispatched by ERCOT for each interval after January 12, 2007, ERCOT shall post the offer price and the name of the entity submitting the offer 48 hours after the day for which the information is accumulated. In the event of interzonal congestion, ERCOT shall post, separately for each zone, the offer price and the name of the entity submitting the highest-priced offer selected or dispatched.

(ii) If the market clearing price for energy (MCPE) or the market clearing price for capacity (MCPC) exceeds the event trigger during any interval, the portion of every market participant's price-quantity offer pair for balancing energy service and each other ancillary service that is at or above the event trigger for that service and that interval shall be posted seven (7) days after the day for which the offer is submitted. ERCOT shall implement the requirements of this clause by September 1, 2007.

(iii) Other offer-specific information for each type of service and for each area where available shall be posted 90 days after the day for which the information is accumulated beginning March 1, 2007. Effective March 1, 2008, this information shall be posted 60 days after the day the information was accumulated. The information subject to this disclosure requirement is as follows:

(I) final energy schedules for each QSE;

(II) final ancillary services schedules for each QSE;

(III) resource plans for each QSE representing a resource;

(IV) actual output from each resource; and

(V) all dispatch instructions from ERCOT for balancing energy and ancillary services.

(iv) The information posted shall include the names of the resources in the portfolio that were committed, the name of the entity submitting the information, the name of the entity controlling each resource in the portfolio.

(B) Two months after the start of operation of the market under a nodal market design:

(i) Offer curves (prices and quantities) for each type of ancillary service and for energy at each settlement point in the real time market, shall be posted 60 days after the day for which the information is accumulated except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT shall post the offer price and the name of the entity submitting the offer 48 hours after the day for which the information is accumulated.

(ii) If the MCPE or the MCPC exceeds the event trigger during any interval, the portion of every market participant's price-quantity offer pairs for balancing energy service and each other ancillary service that is at or above the event trigger for that service and that interval shall be posted seven (7) days after the day for which the offer is submitted.

(iii) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement point shall be posted 60 days after the day for which the information is accumulated.

(iv) The posted information shall be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT shall post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource.

(C) The load and generation resource output for each zone, for each entity that dynamically schedules its resources, shall be posted 90 days after the day for which the information is accumulated beginning March 1, 2007. Effective March 1, 2008, the information required by this subparagraph shall be posted 60 days after the day for which the information is accumulated.

(D) ERCOT shall use §25.502(e) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) as a basis for determining the control of a resource and shall include this information in its market operations data system.

(g) Scarcity pricing mechanism (SPM). ERCOT shall administer the SPM. The SPM shall take effect on January 1, 2007, unless the commission by order changes this date. The SPM shall operate as follows:

(1) The SPM shall operate on an annual resource adequacy cycle, starting on January 1 and ending on December 31 of each year.

(2) For each day of the annual resource adequacy cycle, the peaking operating cost (POC) shall be 10 times the daily Houston Ship Channel gas price index for the previous business day. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) shall be measured as the price at an ERCOT-calculated ERCOT-wide hub.

(4) In the annual resource adequacy cycle, the peaker net margin (PNM) shall be calculated as
Figure: 16 TAC §25.505(g)(4) (No change.)

(5) Each day ERCOT shall post at a publicly accessible location on its website the updated value of the PNM, in dollars per megawatt (MW).

(6) The system-wide offer caps shall be as follows:

(A) The low system offer cap (LCAP) shall be set on a daily basis at the higher of:

(i) $500 per MWh and $500 per MW per hour; or

(ii) 50 times the daily Houston Ship Channel gas price index of the previous business day, expressed in dollars per MWh and dollars per MW per hour.

(B) Beginning March 1, 2007, the high system-wide offer cap (HCAP) shall be $1,500 per MWh and $1,500 per MW per hour.

(C) Beginning March 1, 2008, the HCAP shall be $2,250 per MWh and $2,250 per MW per hour.

(D) Beginning two months after the opening of the nodal market, the HCAP shall be $3,000 per MWh and $3,000 per MW per hour.

(E) At the beginning of the annual resource adequacy cycle, the system-wide offer cap shall be set equal to the HCAP and, except for increases authorized in this section, maintained at this level as long as the PNM during an annual resource adequacy cycle is less than or equal to $175,000 per MW. During an annual resource adequacy cycle, the system-wide offer cap shall be increased in accordance with the schedule authorized in this section unless the PNM has been exceeded by that date. If the PNM exceeds $175,000 per MW during an annual resource adequacy schedule, the system-wide offer cap shall be reset at the LCAP for the remainder of that annual resource adequacy cycle.

(F) The Independent Market Monitor, as part of its responsibilities pursuant to Public Utility Regulatory Act §39.1515(h), may conduct an annual review of the effectiveness of the SPM.

(h) Development and implementation. ERCOT shall use a stakeholder process to develop protocols that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703676
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: September 6, 2007
Proposal publication date: March 9, 2007
For further information, please call: (512) 936-7223

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TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 373. ADVERTISING AND PRACTICE IDENTIFICATION

22 TAC §§373.3, 373.7, 373.13

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §§373.3, 373.7 and 373.13 concerning Practitioner Identification, Corporate Trade Names and Assumed Names and Advertising without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2972). The text will not be republished.

The proposed amendments are being adopted to clarify a practitioners ability to properly identify their practice consistent with board jurisdiction to prevent misleading or deceptive advertising. Section 373.3 provides certain designations of which a podiatrist shall identify his or her practice. The adopted amendment clarifies that any other designation not delineated in the board's rules be approved by the board prior to its use. Section 373.7 seeks to clarify that, although the board is required to approve corporate trade names and assumed names, the board only does so within the advertising scope of practice for podiatry. This adopted amendment ensures that the registration of such names fall upon the civil jurisdiction of the local county clerks office or the Texas Secretary of State. Section 373.13 is amended to allow specialty board certification that is not recognized by the Council on Podiatric Medical Education or the American Podiatric Medical Association providing that a non CPME-APMA recognized specialty board meet certain standards for the benefit of public health and safety. In the modern age of the internet and with technology availability to any person, there is always a possibility of an individual creating false, deceptive, misleading credentials with the use of computers. This adopted rule allows for non CPME-APMA specialty boards to validly be advertised by their members upon proof of a legitimate organization.

No comments were received regarding the board's adoption of the amended rules.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

The adopted amendments implement the Texas Occupations Code §202.253(a)(6)(7) and §202.352.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703738
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: September 9, 2007
Proposal publication date: June 1, 2007
For further information, please call: (512) 305-7000

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CHAPTER 378. CONTINUING EDUCATION AND LICENSE RENEWAL

22 TAC §378.13

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §378.13 concerning License Renewal without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2974). The text will not be republished.

The amendment is being adopted to clarify that the board's rules for license renewal are consistent with Texas Occupations Code §202.301 and related statutes.

No comments were received regarding the board's adoption of the amended rule.

The amendments are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

The adopted amendments implement the Texas Occupations Code §§202.251, 202.262, 202.301, 202.303, 202.6015 and 202.605.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703739
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: September 9, 2007
Proposal publication date: June 1, 2007
For further information, please call: (512) 305-7000

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CHAPTER 382. NON-CERTIFIED RADIOLOGIC TECHNICIANS

22 TAC §382.9

The Texas State Board of Podiatric Medical Examiners adopts an amendment to §382.9 concerning Annual Renewal without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2975). The text will not be republished.

The amendment is being adopted to clarify the proper designation of staff employed by a podiatrist who is a non-certified radiologic technician as opposed to a medical radiologic technologist defined in the Medical Radiologic Technologist Certification Act under the jurisdiction of the Texas Department of State Health Services. The amendment also removes the erroneous requirement that a technician provide proof of mandatory continuing medical education upon annual registration as no such continuing education courses exist.

No comments were received regarding the board's adoption of the amended rule.

The amendment is adopted under Texas Occupations Code, §202.141, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

The adopted amendment implements 25 TAC Part 1 §143.20(e).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 20, 2007.

TRD-200703740
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: September 9, 2007
Proposal publication date: June 1, 2007
For further information, please call: (512) 305-7000

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER E. PROVISION OF ANTI-RABIES BIOLOGICALS

25 TAC §§97.121, 97.123 - 97.125

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §97.121 and §§97.123 - 97.125, concerning the provision of anti-rabies biologicals (vaccines and hyper-immune sera) by the department in accordance with recommendations of the Advisory Committee on Immunization Practices (ACIP). The amendments to §97.121 and §§97.123 - 97.125 are adopted without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2977) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption every 4 years each rule adopted by that agency pursuant to the Government Code, Chapter 2001. Sections 97.121 and 97.123 - 97.125 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The adopted amendments to §97.121 and §§97.123 - 97.125 update the agency, division, section, and branch names, plus, reorder text to simplify processes. In addition, the adopted amendments clarify the department's policies for storage, distribution, loss due to negligence, and reporting requirements of anti-rabies biologicals, plus, provide the ACIP as a reference for assessing rabies exposure and treatment recommendations.

The department consulted with the Health Service Regions, the Zoonosis Control Program, and the regional doctors of veterinarian medicine during the rule development process.

SECTION-BY-SECTION SUMMARY

Amendments to §97.121 and §§97.123-97.125 update the agency, division, section, and branch names and update language for consistent terminology. Amendments to §97.121 establish that the provision of anti-rabies biologicals be in accor-

dance with recent recommendations of the ACIP. Amendments to §97.123 reorder the text, and clarify procedures for stocking, issuing, and returning anti-rabies biologicals. Amendments to §97.124 provide clarification of payment responsibilities, including the clarification that issuance of anti-rabies biologicals will not be withheld due to a patient's inability to pay. Amendments to §97.125 clarify that department-owned anti-rabies biologicals may be dispensed from depots at the price the department procures the vaccine under the current state contract, plus, explains the depot's responsibilities when vaccine is lost due to negligence.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The department's General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.021, which requires the department to protect the public from communicable disease; and §81.004 which allows the department to adopt rules for the effective administration of the Communicable Disease Act; §826.025 which allows the department to adopt rules to provide, and obtain payment for anti-rabies biologicals; §826.011 which allows the department to adopt rules necessary to administer the Rabies Control Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703667
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: September 6, 2007
Proposal publication date: June 1, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER D. FIRE AND ALLIED LINES INSURANCE

DIVISION 4. SMALL INSURER AND NEW INSURER RATE FILING REQUIREMENTS

28 TAC §5.3301

The Commissioner of Insurance adopts the repeal of Division 4, §5.3301, concerning rate filing requirements under Insurance Code Article 5.142 for small and new insurers writing residential property insurance. The repeal is adopted without changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3962).

The repeal of Division 4, §5.3301, is necessary because pursuant to §5.3301(i) and Insurance Code Article 5.142, §17, the section expired on December 1, 2004. The Department identified this division for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

The adoption of the repeal will result in the removal of obsolete and potentially confusing provisions from the Texas Administrative Code.

The Department did not receive any comments on the proposed repeal.

The repeal of Division 4, §5.3301, is adopted pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703674
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-6327

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SUBCHAPTER O. FLEXIBLE RATING PROGRAM FOR CERTAIN INSURANCE LINES

28 TAC §5.9500

The Commissioner of Insurance adopts the repeal of Subchapter O, §5.9500, defining small and medium-sized insurers as referenced in Insurance Code Article 5.101 concerning the Flexible Rating Program for Certain Insurance Lines. The repeal is adopted without changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3962).

The repeal of Subchapter O, §5.9500, is necessary because the expiration of Article 5.101 on December 1, 2004, obviates the need for the subchapter. This section defines the terms "small and medium-sized insurers" and "lines of property and casualty insurance" solely for the purpose of Article 5.101. The Department identified this subchapter for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

The adoption of the repeal will result in the removal of obsolete and potentially confusing provisions from the Texas Administrative Code.

The Department did not receive any comments on the proposed repeal.

The repeal of Subchapter O, §5.9500, is adopted pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703673
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-6327

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SUBCHAPTER Q. INDEPENDENT DATA

28 TAC §5.9700

The Commissioner of Insurance adopts the repeal of Subchapter Q, §5.9700, concerning the fee schedule for the Department's statistical agent, Acxiom Corporation. The repeal is adopted without changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3963).

Subchapter Q, §5.9700, which provides for the fee schedule for a statistical agent contractor, Acxiom Corporation, to provide collection, maintenance, and reporting of the statistical data reported by insurance companies under each of the Department's statistical plans, is not necessary because the Department no longer contracts with this statistical agent. Insurance Code §38.206, which allows statistical agents to collect fees, further obviates the need for the subchapter. The Department identified this subchapter for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

The adoption of the repeal will result in the removal of obsolete and potentially confusing provisions from the Texas Administrative Code.

The Department did not receive any comments on the proposed repeal.

The repeal of Subchapter Q, §5.9700, is adopted pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200703672
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-6327

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SUBCHAPTER R. TEMPORARY RATE REDUCTION FOR CERTAIN LINES OF INSURANCE

28 TAC §§5.9800 - 5.9811

The Commissioner of Insurance adopts the repeal of Subchapter R, §§5.9800 - 5.9811, concerning temporary rate reductions for certain lines of liability insurance affected by tort reform legislation enacted by the 73rd and 74th Legislatures. The repeal is adopted without changes to the proposal published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3963) and will not be republished.

The repeal of Subchapter R, §§5.9800 - 5.9811, is necessary because the need for the rules has been eliminated. The rules establish the methodology to be followed and provide the loss and ALAE reduction percentages to be used to determine the rate reduction factors for certain lines or sublines of liability insurance affected by the 1993 and 1995 tort reforms enacted by the 73rd and 74th Legislatures such that savings from the tort reforms would be passed to all insurers' policyholders on a prospective basis. The repeal of Insurance Code Article 5.131, effective April 1, 2007, requiring mandatory rate reductions, further obviates the need for this subchapter. The Department identified the subchapter for repeal as part of the Department's ongoing review of existing rules pursuant to Government Code §2001.039.

The adoption of the repeal will result in the removal of obsolete and potentially confusing provisions from the Texas Administrative Code.

The Department did not receive any comments on the proposed repeal.

The repeal of Subchapter R, §§5.9800 - 5.9811, is adopted pursuant to Insurance Code §36.001, which provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703671
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 6, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 463-6327

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CHAPTER 15. SURPLUS LINES INSURANCE
SUBCHAPTER A. GENERAL REGULATION OF SURPLUS LINES INSURANCE

28 TAC §§15.3 - 15.5

The Commissioner of Insurance adopts amendments to §§15.3 - 15.5, concerning proof of financial responsibility for resident surplus lines agents. Sections 15.3 - 15.5 are adopted without changes to the proposed text published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4174).

The adopted amendments are necessary to implement SB 1564, 79th Legislature, Regular Session, effective January 1, 2006. SB 1564 repealed the Insurance Code, §981.203(b)(3) and §981.206, which required applicants and surplus lines agents to provide proof of financial responsibility to the Texas Department of Insurance (Department) regarding transactions with insureds under surplus lines insurance policies.

The Department proposed the amendments to §§15.3 - 15.5 on June 22, 2007. The proposal was published for public comment on July 6, 2007. No hearing was held on the proposal, and no comments were received. The Department is adopting the amendments without changes to the amendments as proposed.

Pursuant to the change in law made by SB 1564, surplus lines agents are no longer required to provide proof of financial responsibility to the Department. Accordingly, the adopted amendments remove the requirements from §§15.3 - 15.5 that resident surplus lines agents provide proof of financial responsibility to the Department in the form of a $50,000 surety bond as a condition for licensure. These adopted amendments also update statutory citations in §§15.3 - 15.5 as a result of the enactment of the nonsubstantive revision of the Insurance Code by the 77th Legislature, Regular Session, HB 2811, which became effective on June 1, 2003. Additionally, the plural term "Chapters" in §15.5(a) is changed to singular form for consistency with the updated reference to the Insurance Code, §981.006.

The adopted amendments are necessary to implement SB 1564, the purpose of which includes furthering uniformity and reciprocity among the various states, as set forth in the bill analysis (TEXAS STATE BUSINESS & COMMERCE COMMITTEE, BILL ANALYSIS (Enrolled), SB 1564, 79th Legislature, Regular Session (May 31, 2005)). The Gramm-Leach-Bliley Act (15 U.S.C.A. 93 §6751(c)(1) (1999)) contains a reciprocity condition applicable to the interstate licensing of insurance agents, providing for consistent licensing requirements for resident and nonresident producers. It further requires a reciprocal state to grant licensure to a nonresident producer who provides the following credentials: (i) a request for licensure; (ii) the application for licensure that the producer submitted to its home state; (iii) proof that the producer is licensed and in good standing in its home state; and (iv) the payment of any requisite fee to the appropriate authority. Prior to the implementation of SB 1564, the reciprocity requirements under the Gramm-Leach-Bliley Act had the practical effect of imposing a financial responsibility requirement on resident surplus lines applicants, but waiving this requirement for nonresident applicants. To remedy this disparity in licensing requirements, the 79th Legislature in SB 1564 repealed §981.203(b)(3) and §981.206 of the Insurance Code. Under §981.203(b)(3), surplus lines agents were required to provide proof of financial responsibility to the Department as a condition for licensure. Under §981.206, a surplus lines agent was required to provide an adequate proof of financial responsibility to the Department regarding transactions with insureds under surplus lines insurance policies. In accordance with the repeal of these two statutes, the adopted amendments delete the obsolete financial responsibility requirement for resident applicants under current §§15.3 - 15.5.

Though the notice requirements in §15.4(d) and §15.4(e)(1) are currently in the rule as part of the provisions on proof of agent's financial responsibility, the Department has determined that it is necessary to retain these provisions. The Department has the statutory responsibility to impose requirements necessary to make regulation and control of surplus lines insurance reasonably complete and effective. By retaining the notice provisions, the Department is able to continue to more effectively monitor the surplus lines market to ensure compliance with licensing requirements, thereby protecting consumers who purchase surplus lines policies. The requirement that a surplus lines agency notify the Department of the name and surplus lines license number of each individual surplus lines agent within 30 days of commencement or cessation of employment is applicable to both resident and nonresident surplus lines agencies. Section 15.4(d) is also amended to delete the effective date provision, which was part of the original rule when it was first adopted in 2000 and is no longer applicable. Because the Department is adopting amendments to delete the obsolete financial requirement for resident applicants, it is necessary to amend the title of §15.4 to reflect that the section will continue to impose the current notice requirements relating to commencement and cessation of the employment of individual surplus lines agents.

The adopted amendment to §15.3(d)(3) deletes the requirement that a surplus lines agent obtain a surety bond as a condition of licensure. The adopted amendment to §15.4 deletes subsections (a) - (c) and redesignates the notice provisions in existing §15.4(d) and (e) as §15.4(a) and (b). The adopted amendment to §15.5(a)(5) deletes the provision authorizing the Commissioner to sanction a surplus lines agent that fails to procure and maintain a surety bond and redesignates the remaining paragraphs as §15.5(a)(5) and (6).

The Department did not receive any comments on the proposed amendments.

The amendments are adopted pursuant to the Insurance Code, §§981.001(b)(2), 981.009, 981.202, 981.203(b), 981.218, and 36.001. Section 981.001(b)(2) sets forth the purpose and scope of the regulation of surplus lines insurance generally, stating that it is necessary to provide for the regulation, taxation, supervision, and control of surplus lines transactions by imposing requirements necessary to make regulation and control of surplus lines insurance reasonably complete and effective. Section 981.009 authorizes the Commissioner to adopt rules to implement Chapter 981 or to satisfy requirements under federal law or regulations. Section 981.202 prohibits an agent licensed by this state from issuing or causing to be issued an insurance contract with an eligible surplus lines insurer unless the agent possesses a surplus lines license issued by the Department. Section 981.203(b) requires an agent to: (i) pay an application fee as determined by the Department and (ii) submit a properly completed license application. Section 981.218 requires the Commissioner to monitor the activities of surplus lines agents as necessary to protect the public interest. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 14, 2007.

TRD-200703611
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: September 3, 2007
Proposal publication date: July 6, 2007
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER HH. MILITARY SALES PRACTICES

28 TAC §§21.4201 - 21.4207

The Commissioner of Insurance adopts new Subchapter HH, §§21.4201 - 21.4207, concerning military sales practices, to protect active duty service members of the United States Armed Forces from certain dishonest and predatory practices with respect to the sale of life insurance. The new subchapter is adopted with minor nonsubstantive changes to the proposed text published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4177).

The new subchapter is necessary to curb the numerous violations by insurance agents of United States Department of Defense (DoD) policy committed on Texas military installations. During an investigation commenced in 2004, the Department determined that some insurance agents were violating DoD policy prescribed in DoD Instruction 1344.07 - PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS (DoD Instruction 1344.07) governing commercial solicitation on military installations. The purpose of DoD Instruction 1344.07 is to protect the welfare of DoD personnel as consumers by establishing uniform procedures for personal commercial solicitation and sales to DoD personnel. The Department became aware that agents licensed by the Department had committed the following violations of DoD policy prescribed in DoD Instruction 1344.07 on Texas military installations: soliciting the purchase of insurance products door-to-door in service member residential housing areas without first establishing an appointment; soliciting service members in a mass audience; soliciting service members during normally scheduled duty hours; soliciting on military installations without the permission of the installation commander or commander's designee; circumventing requirements established by the DoD or a branch of the Armed Forces relating to life insurance transactions; participating in education programs sponsored by the Armed Forces; participating in allotment processing directing service member pay to a third party for the purchase of life insurance; offering promotional incentives to facilitate life insurance sales transactions; using titles implying affiliation with the U.S. Government or Armed Forces; providing misleading descriptions of life insurance product features; using deceptive lead materials; failing to disclose that the product to be sold at an appointment would be life insurance, even upon direct questioning; and failing to provide service member life insurance applicants with required information following sales.

It is the Department's position that pursuant to the Insurance Code Chapter 541 (regulating Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), insurance sales practices committed in violation of DoD policy enacted to safeguard the consumer welfare of DoD personnel constitute false, misleading, unfair or deceptive trade practices and are therefore prohibited under the Insurance Code Chapter 541. Life insurance solicitation in violation of DoD policy is misleading and deceptive because solicited service members incorrectly believe that the insurer or insurance agent's activities are sanctioned or authorized by the military installation commander, and that the insurers or insurance agents have met certain standards and requirements intended to protect service members. Violations of DoD policies governing commercial solicitation are unfair because they allow violating insurers and insurance agents an undue competitive advantage over compliant insurers and insurance agents. Insurers and insurance agents violating DoD policies are given an undue competitive advantage because they have access to, and communications with, service members in times, places, and manners not afforded to compliant insurers and insurance agents.

The new subchapter is also necessary to deter other fraudulent and deceptive acts not specifically prohibited by DoD policy. In the course of its investigation, the Department found that insurers licensed by the Department had engaged in establishing fictitious accounts at depository institutions into which premiums for life insurance were deposited directly from service members' pay. This resulted in the life insurance premium deduction being falsely described on service members' Leave and Earnings Statements as "BANK ACCT ALLOT," the notation for a deposit to a checking or savings account held by the service member. Some agents were found to have given deceptive descriptions regarding the propriety of Servicemembers' Group Life Insurance, a low-cost group life insurance program offered to service members and subsidized by the federal government. It is the Department's position that pursuant to the Insurance Code Chapter 541, these activities constitute false, misleading, unfair or deceptive trade practices because they involve untrue written and oral statements made by insurers or insurance agents, and are therefore prohibited by Insurance Code Chapter 541.

The United States Government has also addressed the issue of deceptive insurance sales practices to service members. The Military Personnel Financial Services Protection Act, Public Law 109-290 (Public Law), was passed by Congress and signed into law by President Bush in 2006. Included as rationale for the Public Law, Congress decided that given the great sacrifices that members of the Armed Forces make to protect the United States, they must be offered first-rate financial products. Congress found it imperative that members of our Armed Forces be shielded from "abusive and misleading sales practices," and protected from certain life insurance products that are "improperly marketed as investment products, providing minimal death benefits in exchange for excessive premiums that are front-loaded in the first few years, making them entirely inappropriate for most military personnel." The Public Law finds that a need exists for regulation of life insurance sales practices on military installations, and expressly provides that state laws and regulations governing insurance are applicable on federal land and military installations.

Adopted §21.4201 is necessary to specify the purpose of the subchapter. Adopted §21.4202 is necessary to clarify that the subchapter applies only to the sale or solicitation of life insurance or annuity products to active duty United States Armed Forces

service members after the effective date of the subchapter, and that the subchapter applies in addition to other statutes and rules regulating insurance. Certain types of insurance are exempted from the subchapter in adopted §21.4203 because the Department is not aware of false, misleading, unfair or deceptive sales practices relating to these types of insurance or contracts targeting service members. Adopted §21.4204 defines terms that are necessary to implement and enforce the rules.

Adopted §21.4205 provides that certain acts or practices are considered to be false, misleading, deceptive or unfair when committed on a military installation. Adopted §21.4206 provides that certain acts or practices are considered to be false, misleading, deceptive or unfair regardless of where they are committed. Because the acts listed in §21.4205 and §21.4206 are determined to be false, misleading, deceptive or unfair pursuant to the Insurance Code Chapter 541, the acts are prohibited under Chapter 541. Section 541.001 states that the purpose of Chapter 541 is to regulate trade practices in the business of insurance by defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices and prohibiting those trade practices. Section 541.003 prohibits trade practices defined in Chapter 541 or as determined under Chapter 541 to be unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

Adopted §24.4207 is necessary to clarify that if a court of competent jurisdiction declares a provision of the subchapter to be invalid for any reason, the remaining provisions will remain in effect.

Following publication of the proposed new subchapter in the July 6, 2007, *Texas Register*, the Department received two written comments from interested parties. No hearing was held on the proposed rules. The commenters requested an effective date for the proposed rules of January 1, 2008. The rules are adopted to be effective on January 1, 2008.

The Department has not made any changes to the proposed text as a result of comments. The Department has, however, made minor nonsubstantive changes to the proposed text as follows: in §21.4203(a)(5), 38 U.S.C. §§1965 et seq. was changed to 38 U.S.C. Section 1965 et seq., and in §21.4206(a)(2)(A), 12 U.S.C. §§4301 et seq. was changed to 12 U.S.C. Section 4301 et seq. to reflect the correct form of citation, and in §21.4206(a)(3), ". . . as defined in §21.4206(a)(2);" was changed to ". . . as defined in subsection (a)(2) of this section;" to correct an internal reference. None of the changes materially alter issues raised in the proposed rule, introduce new subject matter, or affect persons other than those previously on notice.

Adopted §21.4201 specifies the purpose of the subchapter. New §21.4202(a) defines the scope of the rule as applying only to the solicitation or sale of life insurance and annuity products by insurers or agents to active duty service members of the United States Armed Forces. Adopted §21.4202(b) specifies that the subchapter applies only to acts or practices committed on or after the effective date of the subchapter. Adopted §21.4202(c) states that the subchapter applies in addition to statutes and rules governing marketing and solicitation and deceptive or unfair trade practices, and shall not be interpreted to limit those statutes and rules. This subsection also states that the Commissioner's authority to discipline and bring enforcement action under the adopted subchapter is in addition to existing authority.

Adopted §21.4203(a) exempts certain types of insurance products and contracts from the rule. Adopted 21.4203(b) specifies that nothing in the rule shall be construed to restrict the ability of certain organizations to educate members of the United States Armed Forces in accordance with DoD Instruction 1344.07 or successor directive. Adopted 21.4203(c) states that certain advertising and solicitation methods do not constitute solicitation for purposes of the adopted rule, but that the adopted rule does apply to in person, face-to-face meetings established as a result of the solicitation exemptions.

Adopted §21.4204 provides definitions for certain terms used in the subchapter.

Adopted §21.4205(a) declares certain acts or practices false, misleading, deceptive or unfair when committed on a military installation, including knowingly soliciting the purchase of a life insurance product "door-to-door" without first establishing a specific appointment; soliciting service members in a group or mass audience or setting where attendance is not voluntary; knowingly making appointments with or soliciting service members during their normally scheduled duty hours; making appointments with or soliciting service members in certain service member living areas or other prohibited areas; soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee; posting unauthorized bulletins, notices or advertisements; failing to present required forms to service members or encouraging service members solicited not to complete or submit required forms; or knowingly accepting an application for life insurance or issuing a life insurance policy on the life of an enlisted member of the United States Armed Forces without first obtaining a completed copy of certain required forms.

Adopted §21.4205(b) provides that certain acts or practices committed on a military installation are corrupt or improper influences or inducements and are determined to be false, misleading, deceptive or unfair, including using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with respect to the solicitation or sale of life insurance to service members or using an insurance agent to participate in any United States Armed Forces sponsored education or orientation program.

Adopted §21.4206(a) provides that certain acts or practices are corrupt or improper influences or inducements and declares these acts or practices to be false, misleading, deceptive or unfair regardless of location, including submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance; knowingly receiving funds from a service member for life insurance premium payment from a depository institution with which the service member has no formal banking relationship; entering into an agreement whereby funds received from a service member by allotment for the payment of life insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has no formal banking relationship as defined in the rule; entering into any agreement with a depository institution for the purpose of receiving funds from a service member in which the depository institution agrees to accept direct deposits from a service member with whom it has no formal banking relationship for the payment of premium on a life insurance policy; using DoD personnel as a representative or agent in any capacity with respect

to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel; offering or giving anything of value to DoD personnel to procure his or her assistance in assisting with the solicitation or sale of life insurance to another service member; knowingly offering or giving anything of value to a certain service members for his or her attendance to any event where an application for life insurance is solicited; or advising certain service members to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

Adopted §21.4206(b) provides that certain acts or practices lead to confusion regarding source, sponsorship, approval or affiliation and declares these acts or practices to be false, misleading, deceptive or unfair regardless of location, including making any representation, or using any device, title, descriptive name or identifier that may confuse or mislead a service member into believing that the insurer, agent or life insurance product offered is connected with of endorsed by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity, or soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that may confuse or mislead a service member into believing that either the insurer, agent or insurance product is connected with or endorsed by the U.S. Government, or the United States Armed Forces. The subsection provides examples of prohibited insurance agent titles and specifies that the rule does not prohibit the use of certain professional designations related to the business of insurance.

Adopted §21.4206(c) provides that certain acts or practices lead to confusion regarding premiums, costs or investment returns and declares these acts or practices to be false, misleading, deceptive or unfair regardless of location, including using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid or misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

Adopted §21.4206(d) provides that certain acts or practices relating to Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) are false, misleading, deceptive or unfair regardless of location, including making certain representations regarding SGLI or VGLI coverage that are false, misleading or deceptive or suggesting a service member cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

Adopted §21.4206(e) declares that certain acts or practices relating to disclosure are false, misleading, deceptive or unfair regardless of location, including using any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance agent, if that is the case, for the purpose of soliciting the purchase of life insurance; failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser; excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance; failing to make, at the time of sale or offer to an individual known to be a service member, certain written disclosures required by federal law to a service member; or failing to provide applicants with certain explanations and written documents when a sale of life insurance is conducted in-person face-to-face with a known service member.

Adopted §21.4206(f) declares certain acts or practices relating to the sale or solicitation of life insurance products to be false, misleading, deceptive or unfair, including recommending the purchase of life insurance products that include a side fund to certain service members under specific circumstances; offering or selling certain life insurance products to service members unless specific needs assessment requirements are met; offering or selling any life insurance contract which fails to comply with Texas statutes governing nonforfeiture provisions; or selling a life insurance product containing a war or military exclusion to a known service member. The subsection describes the circumstances that must be satisfied to avoid a finding that certain sales are false, misleading, deceptive or unfair.

New §21.4207 provides that the remaining provisions of the subchapter will remain valid if any provision is held to be invalid.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Comment: Two commenters requested that the Department consider an effective date for the new subchapter not earlier than January 1, 2008, to allow insurers and agents sufficient time to comply with any rules that are finally adopted. One of these commenters requested that the Department amend the text of the rule to include this effective date.

Agency Response: The Department agrees that an effective date of January 1, 2008, is appropriate to allow insurers and agents time to comply with new rules. However, the Department does not agree that amendment of the text of the rule is necessary. This adoption order specifies that the effective date of the rules is January 1, 2008, and the Texas Register will include the effective date in the published adoption order notice.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL. For: None.

For with changes: American Council of Life Insurers.

Against: None.

Neither for nor against: Texas Association of Life & Health Insurers.

The new sections are adopted under the Insurance Code §§541.001, 541.003, 541.401(a), 541.008 and 36.001. Section 541.401(a) authorizes the Commissioner to adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. Section 541.001 states that the purpose of Chapter 541 is to regulate trade practices in the business of insurance by defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices, and prohibiting those trade practices.

Section 541.003 prohibits trade practices defined in Chapter 541 or as determined under Chapter 541 to be unfair methods of competition or unfair or deceptive acts or practices in the business of insurance. Section 541.008 states that Chapter 541 shall be liberally construed and applied. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

§21.4201. Purpose.

The purpose of this subchapter is to set forth standards to protect active duty service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified insurance sales practices to be false, misleading, deceptive or unfair.

§21.4202. Scope.

(a) This subchapter shall apply only to the solicitation or sale of any life insurance or annuity product by an insurer or insurance agent to an active duty service member of the United States Armed Forces.

(b) This subchapter shall apply only to acts or practices committed on or after the effective date of this subchapter.

(c) This subchapter shall apply in addition to all other statutes and Texas Department of Insurance rules concerning the marketing and solicitation of insurance products, as well as statutes and Texas Department of Insurance rules concerning unfair or deceptive trade practices, and shall not be interpreted to limit those statutes and rules in any manner. The commissioner may discipline or enforce an action against an insurer or insurance agent under this subchapter in addition to any other statute or Texas Department of Insurance rule authorizing disciplinary or enforcement action.

§21.4203. Exemptions.

(a) This subchapter shall not apply to solicitations or sales involving:

(1) credit insurance;

(2) group life insurance or group annuities where there is no in-person, face-to-face solicitation of individuals by an insurance agent or where the contract or certificate does not include a side fund;

(3) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner; or, when a term conversion privilege is exercised among corporate affiliates;

(4) individual stand-alone health policies, including disability income policies;

(5) contracts offered by Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI), as authorized by 38 U.S.C. Section 1965 et seq.;

(6) life insurance contracts offered through or by a nonprofit military association, qualifying under Section 501(c)(23) of the Internal Revenue Code (IRC), and which are not underwritten by an insurer; or

(7) contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the IRC, as amended, if established or maintained by an employer;

(C) a government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(E) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(F) prearranged funeral contracts.

(b) Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 - PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

(c) For purposes of this subchapter, general advertisements, direct mail and internet marketing shall not constitute "solicitation." Telephone marketing shall not constitute "solicitation" provided the caller explicitly and conspicuously discloses that the product concerned is life insurance and makes no statements that avoid a clear and unequivocal statement that life insurance is the subject matter of the solicitation. Provided however, nothing in this subsection shall be construed to exempt an insurer or insurance agent from this subchapter in any in-person, face-to-face meeting established as a result of the "solicitation" exemptions identified in this subsection.

§21.4204. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Active duty--Full-time duty in the active military service of the United States and includes members of the reserve component (National Guard and Reserve) while serving under published orders for active duty or full-time training. The term does not include members of the reserve component who are performing active duty or active duty for training under military calls or orders specifying periods of less than 31 calendar days.

(2) Department of Defense (DoD) Personnel--All active duty service members and all civilian employees, including nonappropriated fund employees and special government employees, of the U.S. Department of Defense.

(3) Door to door--A solicitation or sales method whereby an insurance agent proceeds randomly or selectively from household to household without prior specific appointment.

(4) General advertisement--An advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or the insurance agent.

(5) Insurer--An insurance company required to be licensed under the laws of this state to provide life insurance products, including annuities.

(6) Insurance agent--A person required to be licensed under Chapter 4054, Insurance Code, and includes a person required to be licensed in accordance with §4054.051(7).

(7) Known or knowingly--Depending on its use in this subchapter, the insurance agent or insurer had actual awareness, or in the exercise of ordinary care should have known, at the time of the act or practice complained of, that the person solicited:

(A) is a service member; or

(B) is a service member with a pay grade of E-4 or below.

(8) Life insurance--Insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for

disability income and unless otherwise specifically excluded, includes individually issued annuities.

(9) Military installation--Any federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which service members are assigned for duty, including barracks, transient housing, and family quarters.

(10) MyPay--A Defense Finance and Accounting Service (DFAS) web-based system that enables service members to process certain discretionary pay transactions or provide updates to personal information data elements without using paper forms.

(11) Service member--Any active duty officer (commissioned and warrant) or enlisted member of the United States Armed Forces.

(12) Side fund--A fund or reserve that is part of or otherwise attached to a life insurance policy (excluding individually issued annuities) by rider, endorsement or other mechanism which accumulates premium or deposits with interest or by other means. The term does not include:

(A) accumulated value or cash value or secondary guarantees provided by a universal life policy;

(B) cash values provided by a whole life policy which are subject to the provisions of the Insurance Code Chapter 1105; or

(C) a premium deposit fund which:

(i) contains only premiums paid in advance which accumulate at interest;

(ii) imposes no penalty for withdrawal;

(iii) does not permit funding beyond future required premiums;

(iv) is not marketed or intended as an investment; and

(v) does not carry a commission, either paid or calculated.

(13) Specific appointment--A prearranged appointment agreed upon by both parties and definite as to place and time.

(14) United States Armed Forces--All components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

§21.4205. Practices Declared False, Misleading, Deceptive or Unfair on a Military Installation.

(a) The following acts or practices when committed on a military installation by an insurer or insurance agent with respect to the in-person, face-to-face solicitation of life insurance are declared to be false, misleading, deceptive or unfair:

(1) knowingly soliciting the purchase of any life insurance product "door to door" or without first establishing a specific appointment for each meeting with the prospective purchaser;

(2) soliciting service members in a group or mass audience or in a captive audience where attendance is not voluntary;

(3) knowingly making appointments with or soliciting service members during their normally scheduled duty hours;

(4) making appointments with or soliciting service members in barracks, day rooms, unit areas, or transient personnel housing or other areas where the installation commander has prohibited solicitation;

(5) soliciting the sale of life insurance without first obtaining permission from the installation commander or the commander's designee;

(6) posting unauthorized bulletins, notices or advertisements;

(7) failing to present DD Form 2885, Personal Commercial Solicitation Evaluation, to service members solicited or encouraging service members solicited not to complete or submit a DD Form 2885; or

(8) knowingly accepting an application for life insurance or issuing a policy of life insurance on the life of an enlisted member of the United States Armed Forces without first obtaining for the insurer's files a completed copy of any required form which confirms that the applicant has received counseling or fulfilled any other similar requirement for the sale of life insurance established by regulations, directives or rules of the DoD or any branch of the Armed Forces.

(b) The following acts or practices when committed on a military installation by an insurer or insurance agent constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(1) using DoD personnel, directly or indirectly, as a representative or agent in any official or business capacity with or without compensation with respect to the solicitation or sale of life insurance to service members; or

(2) using an insurance agent to participate in any United States Armed Forces sponsored education or orientation program.

§21.4206. Practices Declared Deceptive or Unfair Regardless of Location.

(a) The following acts or practices by an insurer or insurance agent constitute corrupt practices, improper influences or inducements and are declared to be false, misleading, deceptive or unfair:

(1) submitting, processing or assisting in the submission or processing of any allotment form or similar device used by the United States Armed Forces to direct a service member's pay to a third party for the purchase of life insurance. The foregoing includes, but is not limited to, using or assisting in using a service member's "MyPay" account or other similar internet or electronic medium for such purposes. This subsection does not prohibit assisting a service member by providing insurer or premium information necessary to complete any allotment form;

(2) knowingly receiving funds from a service member for the payment of premium from a depository institution with which the service member has no formal banking relationship. For purposes of this section, a formal banking relationship is established when the depository institution:

(A) provides the service member a deposit agreement and periodic statements and makes the disclosures required by the Truth in Savings Act, 12 U.S.C. Section 4301 et seq. and the regulations promulgated thereunder; and

(B) permits the service member to make deposits and withdrawals unrelated to the payment or processing of insurance premiums;

(3) employing any device or method or entering into any agreement whereby funds received from a service member by allotment for the payment of insurance premiums are identified on the service member's Leave and Earnings Statement or equivalent or successor form as "Savings" or "Checking" and where the service member has

no formal banking relationship as defined in subsection (a)(2) of this section;

(4) entering into any agreement with a depository institution for the purpose of receiving funds from a service member whereby the depository institution, with or without compensation, agrees to accept direct deposits from a service member with whom it has no formal banking relationship;

(5) using DoD personnel, directly or indirectly, as a representative or agent in any official or unofficial capacity with or without compensation with respect to the solicitation or sale of life insurance to service members who are junior in rank or grade, or to the family members of such personnel;

(6) offering or giving anything of value, directly or indirectly, to DoD personnel to procure their assistance in encouraging, assisting or facilitating the solicitation or sale of life insurance to another service member;

(7) knowingly offering or giving anything of value to a service member with a pay grade of E-4 or below for his or her attendance to any event where an application for life insurance is solicited; or

(8) advising a service member with a pay grade of E-4 or below to change his or her income tax withholding or state of legal residence for the sole purpose of increasing disposable income to purchase life insurance.

(b) The following acts or practices by an insurer or insurance agent lead to confusion regarding source, sponsorship, approval or affiliation and are declared to be false, misleading, deceptive or unfair:

(1) Making any representation, or using any device, title, descriptive name or identifier that has the tendency or capacity to confuse or mislead a service member into believing that the insurer, insurance agent or product offered is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, the United States Armed Forces, or any state or federal agency or government entity. Examples of prohibited insurance agent titles include, but are not limited to, "Battalion Insurance Counselor," "Unit Insurance Advisor," "Servicemen's Group Life Insurance Conversion Consultant" or "Veteran's Benefits Counselor." Nothing in this subchapter shall be construed to prohibit a person from using a professional designation awarded after the successful completion of a course of instruction in the business of insurance by an accredited institution of higher learning. Such designations include, but are not limited to, Chartered Life Underwriter (CLU), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Master of Science In Financial Services (MSFS), or Masters of Science Financial Planning (MS).

(2) Soliciting the purchase of any life insurance product through the use of or in conjunction with any third party organization that promotes the welfare of or assists members of the United States Armed Forces in a manner that has the tendency or capacity to confuse or mislead a service member into believing that either the insurer, insurance agent or insurance product is affiliated, connected or associated with, endorsed, sponsored, sanctioned or recommended by the U.S. Government, or the United States Armed Forces.

(c) The following acts or practices by an insurer or insurance agent lead to confusion regarding premiums, costs or investment returns and are declared to be false, misleading, deceptive or unfair:

(1) using or describing the credited interest rate on a life insurance policy in a manner that implies that the credited interest rate is a net return on premium paid; or

(2) excluding individually issued annuities, misrepresenting the mortality costs of a life insurance product, including stating or implying that the product "costs nothing" or is "free."

(d) The following acts or practices by an insurer or insurance agent regarding SGLI or VGLI are declared to be false, misleading, deceptive or unfair:

(1) making any representation regarding the availability, suitability, amount, cost, exclusions or limitations to coverage provided to a service member or dependents by SGLI or VGLI, which is false, misleading or deceptive;

(2) making any representation regarding conversion requirements, including the costs of coverage, or exclusions or limitations to coverage of SGLI or VGLI to private insurers which is false, misleading or deceptive; or

(3) suggesting, recommending or encouraging a service member to cancel or terminate his or her SGLI policy or issuing a life insurance policy which replaces an existing SGLI policy unless the replacement shall take effect upon or after the service member's separation from the United States Armed Forces.

(e) The following acts or practices by an insurer and/or insurance agent regarding disclosure are declared to be false, misleading, deceptive or unfair:

(1) deploying, using or contracting for any lead generating materials designed exclusively for use with service members that do not clearly and conspicuously disclose that the recipient will be contacted by an insurance agent, if that is the case, for the purpose of soliciting the purchase of life insurance;

(2) failing to disclose that a solicitation for the sale of life insurance will be made when establishing a specific appointment for an in-person, face-to-face meeting with a prospective purchaser;

(3) excluding individually issued annuities, failing to clearly and conspicuously disclose the fact that the product being sold is life insurance;

(4) failing to make, at the time of sale or offer to an individual known to be a service member, the written disclosures required by Section 10 of the "Military Personnel Financial Services Protection Act," Pub. L. No. 109-290, p.16; or

(5) excluding individually issued annuities, when the sale is conducted in-person face-to-face with an individual known to be a service member, failing to provide the applicant at the time the application is taken:

(A) an explanation of any free look period with instructions on how to cancel if a policy is issued; and

(B) either a copy of the application or a written disclosure. The copy of the application or the written disclosure shall clearly and concisely set out the type of life insurance, the death benefit applied for and its expected first year cost. A basic illustration that meets the requirements of Chapter 21, Subchapter N of this title (relating to Life Insurance Illustrations), shall be deemed sufficient to meet this requirement for a written disclosure.

(f) The following acts or practices by an insurer or insurance agent with respect to the sale of certain life insurance products are declared to be false, misleading, deceptive or unfair:

(1) excluding individually issued annuities, recommending the purchase of any life insurance product which includes a side fund to a service member in pay grades E-4 and below unless the insurer has

reasonable grounds for believing that the life insurance death benefit, standing alone, is suitable;

(2) offering for sale or selling a life insurance product which includes a side fund to a service member in pay grades E-4 and below who is currently enrolled in SGLI is presumed unsuitable unless, after the completion of a needs assessment, the insurer demonstrates that the applicant's SGLI death benefit, together with any other military survivor benefits, savings and investments, survivor income, and other life insurance are insufficient to meet the applicant's insurable needs for life insurance.

(A) "Insurable needs" are the risks associated with premature death taking into consideration the financial obligations and immediate and future cash needs of the applicant's estate and/or survivors or dependents.

(B) "Other military survivor benefits" include, but are not limited to: the Death Gratuity, Funeral Reimbursement, Transition Assistance, Survivor and Dependents' Educational Assistance, Dependency and Indemnity Compensation, TRICARE Healthcare benefits, Survivor Housing Benefits and Allowances, Federal Income Tax Forgiveness, and Social Security Survivor Benefits.

(3) excluding individually issued annuities, offering for sale or selling any life insurance contract which includes a side fund:

(A) unless interest credited accrues from the date of deposit to the date of withdrawal and permits withdrawals without limit or penalty;

(B) unless the applicant has been provided with a schedule of effective rates of return based upon cash flows of the combined product. For this disclosure, the effective rate of return will consider all premiums and cash contributions made by the policyholder and all cash accumulations and cash surrender values available to the policyholder in addition to life insurance coverage. This schedule will be provided for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and

(C) which by default diverts or transfers funds accumulated in the side fund to pay, reduce or offset any premiums due.

(4) excluding individually issued annuities, offering for sale or selling any life insurance contract which after considering all policy benefits, including but not limited to endowment, return of premium or persistency, does not comply with the requirements of the Insurance Code Chapter 1105; or

(5) selling any life insurance product to an individual known to be a service member that excludes coverage if the insured's death is related to war, declared or undeclared, or any act related to military service except for an accidental death coverage, e.g., double indemnity, which may be excluded.

§21.4207. Severability.

If a court of competent jurisdiction holds that any provision of this subchapter is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this subchapter shall remain in effect.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 17, 2007.

TRD-200703675
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: January 1, 2008
Proposal publication date: July 6, 2007
For further information, please call: (512) 463-6327

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 34. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

SUBCHAPTER B. NEGOTIATION OF CONTRACT DISPUTES

37 TAC §34.22, §34.24

The Texas Department of Public Safety adopts amendments to §34.22 and §34.24, concerning Negotiation of Certain Contract Disputes, without changes to the proposed text as published in the June 1, 2007, issue of the *Texas Register* (32 TexReg 2981) and will not be republished.

Adoption of amendments to §34.22 and §34.24 are necessary in order to make the department's administrative rules consistent with the amendments to Chapter 2260 of the Texas Government Code pursuant to HB 1940 from the 79th Regular Session.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §2260.052(c).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 16, 2007.

TRD-200703652
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: September 5, 2007
Proposal publication date: June 1, 2007
For further information, please call: (512) 424-2135

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Public Utility Commission of Texas

Title 16, Part 2

TRD-200703707
Filed: August 17, 2007

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Proposed Rule Reviews

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (Division) files this notice of intention to review the rules contained in Chapter 136 concerning Benefits--Vocational Rehabilitation. This proposed review is pursuant to the General Appropriations Act, Article IX, §167; 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature; and Texas Government Code, §2001.039, as added by S.B. 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§136.1. Review of Employer Report of Injury

§136.2. Registry of Private Providers of Vocational Rehabilitation Services

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on October 1, 2007, and submitted to Victoria Ortega, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200703666
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: August 17, 2007

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 21, Interconnection Agreements for Telecommunications Service Providers, pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules*. The commission's Chapter 21 Interconnection Agreement rules (Texas Administrative Code, Title 16, Part 2) establish procedures for approving interconnection agreements and resolving open issues pursuant to the Federal Telecommunications Act of 1996 (FTA) §252. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 34576, *Agency Review of Chapter 21 - Interconnection Agreements for Telecommunications Service Providers, Pursuant to Texas Government Code §2001.039*, is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section in Chapter 21 continue to exist. In addition, the commission welcomes comments on any modifications interested persons believe would improve the rules.

If it is determined during this review that any section of Chapter 21 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding; thus this notice of intention to review Chapter 21 has no effect on the sections as they currently exist.

Comments on the review of Chapter 21 may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326, within 30 days after publication. Sixteen copies of comments to the proposed rule review are required to be filed pursuant to §21.71(c) of this title. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapters and to clearly designate which section is being commented upon. All comments should refer to Project Number 30088.

The notice of intent to review Chapter 21, Procedural Rules, is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (Vernon 2000, Supplement 2006) which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052; Texas Government Code §2001.039.

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS.

§21.1. Purpose and Scope.

§21.3. Definitions.

§21.5. Representative Appearances.

§21.7. Standards of Conduct.

§21.9. Computation of Time.

§21.11. Suspension of Rules and Good Cause Exceptions.

SUBCHAPTER B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS.

§21.31. Filings of Pleadings, Documents, and Other Materials.

§21.33. Formal Requisites of Pleadings and Documents to be filed with the Commission.

§21.35. Service of Pleadings and Documents.

§21.37. Examination and Correction of Pleadings and Documents.

§21.39. Amended Pleadings.

§21.41. Motions.

SUBCHAPTER C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS

§21.61. Threshold Issues and Certification of Issues to the Commission.

§21.63. Interim Issues and Orders.

§21.65. Interlocutory Appeals.

§21.67. Dismissal of a Proceeding.

§21.69. Summary Decision.

§21.71. Sanctions.

§21.73. Consolidation of Dockets, Consolidation of Issues, and Joint Filings.

§21.75. Motions for Clarification and Motions for Reconsideration.

§21.77. Confidential Material.

SUBCHAPTER D. DISPUTE RESOLUTION

§21.91. Mediation.

§21.93. Voluntary Alternative Dispute Resolution.

§21.95. Compulsory Arbitration.

§21.97. Approval of Negotiated Agreements.

§21.99. Approval of Arbitrated Agreements.

§21.101. Approval of Amendments to Existing Interconnection Agreements.

§21.103. Approval of Agreements Adopting Terms and Conditions Pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i).

SUBCHAPTER E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION

§21.121. Purpose.

§21.123. Informal Settlement Conference.

§21.125. Formal Dispute Resolution Proceeding.

§21.121. Request for Expedited Ruling.

§21.129. Request for Interim Ruling Pending Dispute Resolution.

TRD-200703716
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2007

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The Public Utility Commission of Texas (commission) publishes this notice of intention toreview Chapter 27, Rules for Administrative Services pursuant to Texas Government Code §2001.039, *Agency Review of Existing Rules*. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part II, or through the commission's website at www.puc.state.tx.us. Project Number 34576, *Agency Review of Chapter 27 - Rules for Administrative Services, Pursuant to Texas Government Code §2001.039*, is assigned to this proceeding.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reason for adopting or readopting the rules continues to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each section in Chapter 27 continue to exist. In addition, the commission welcomes comments on any modifications interested persons believe would improve the rules. The rules in Chapter 27 were adopted pursuant to Texas Government Code §2161.003, which requires the commission to adopt the Texas Building and Procurement Commission rules for Historically Underutilized Businesses (HUB); Texas Government Code §2260.052, which requires the commission to develop rules to govern the negotiation and mediation of certain contract claims against the state; and Texas Government Code §2155.076, which requires the commission to develop and adopt protest procedures for vendors' protests concerning commission purchases that are consistent with the Texas Building and Procurement Commission rules on the same subject. The public benefit anticipated in the adoption of these rules was a streamlined method for securing more goods and services from HUB vendors; the efficient resolution of contract disputes between contractors and the commission; and to provide readily available written protest procedures for vendors who wish to dispute issues related to agency purchases.

If it is determined during this review that any section of Chapter 27 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding; thus this notice of intention to review Chapter 27 has no effect on the sections as they currently exist. Therefore, Leticia E. Flores, Director of General Law, has determined that this review has no fiscal implications for state or local government; no adverse effect on small businesses or micro-businesses; no economic costs to persons who are required to comply with these sections; and no effect on a local economy.

Comments on the review of Chapter 27 (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. When filing comments interested persons are requested to comment on the sections in the same order they are found in the chapters and to clearly designate which section is being commented upon. All comments should refer to Project Number 34576.

The rules subject to this review are proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the

exercise of its powers and jurisdiction; and Texas Government Code §2001.039 (Vernon 2000, Supplement 2006) which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Government Code Chapter 2155, Subchapter B; Chapter 2161; and Chapter 2260.

SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES.

§27.31. Historically Underutilized Business Program.

SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES.

DIVISION 1: General.

§27.61. Purpose.

§27.63. Applicability.

§27.65. Definitions.

§27.67. Prerequisites to Suit.

§27.69. Sovereign Immunity.

DIVISION 2: Negotiation of Contract Disputes.

§27.81. Notice of Claim of Breach of Contract.

§27.83. Agency Counterclaim.

§27.85. Request for Voluntary Disclosure of Additional Information.

§27.87. Duty to Negotiate.

§27.89. Timetable.

§27.91. Conduct of Negotiation.

§27.93. Settlement Approval Procedures.

§27.95. Settlement Agreement.

§27.97. Costs of Negotiation.

§27.99. Request for Contested Case Hearing.

DIVISION 3: Mediation of Contract Disputes.

§27.111. Mediation Timetable.

§27.113. Conduct of Mediation.

§27.115. Agreement to Mediate.

§27.117. Qualifications and Immunity of the Mediator.

§27.119. Confidentiality of Mediation and Final Settlement Agreement.

§27.121. Costs of Mediation.

§27.123. Settlement Approval Procedures.

§27.125. Initial Settlement Agreement.

§27.127. Final Settlement Agreement.

§27.129. Referral to the State Office of Administrative Hearings (SOAH).

DIVISION 4: Assisted Negotiation Processes.

§27.141. Assisted Negotiation Processes.

§27.143. Factors Supporting the Use of Assisted Negotiation Processes.

§27.145. Use of Assisted Negotiation Processes.

SUBCHAPTER D. VENDOR PROTEST.

§27.161. Procedures for Resolving Vendor Protests.

TRD-200703717
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2007

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Adopted Rule Reviews

Texas Department of Banking

Title 7, Part 2

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 17, concerning trust company regulation. The review addressed the rules in both Subchapter A (General), comprised of §§17.2 - 17.4 and Subchapter B (Examination and Call Reports), comprised of §§17.21 - 17.23.

Notice of the review of Chapter 17 was published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1331). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting §§17.2 - 17.4 and §§17.21 - 17.23 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200703703
Sarah J. Shirley
General Counsel
Texas Department of Banking
Filed: August 17, 2007

♦ ♦ ♦

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 19, concerning trust company loans and investments. The review addressed the rules in all three subchapters, specifically Subchapter A (Loans) comprised of §19.1; Subchapter B (Investments) comprised of §19.21 and §19.22; and Subchapter C (Real Estate) comprised of §19.51.

Notice of the review of Chapter 19 was published in the March 9, 2007, issue of the *Texas Register* (32 TexReg 1331). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting §§19.1, 19.21, 19.22, and 19.51 continue to exist and readopts these sections without changes in accordance with the requirements of Government Code, §2001.039.

TRD-200703704
Sarah J. Shirley
General Counsel
Texas Department of Banking
Filed: August 17, 2007

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §25.24(b)(1)

Annual Assessment Schedule:

If your number of outstanding contracts is:		Then your annual assessment is:
Over --	But not over --	
----------	99	$150 plus the amount of your number of outstanding contracts over 0 multiplied by a factor of $3.50
100	499	$500 plus the amount of your number of outstanding contracts over 100 multiplied by a factor of $3.00
500	999	$1,700 plus the amount of your number of outstanding contracts over 500 multiplied by a factor of $2.70
1,000	1,999	$3,100 plus the amount of your number of outstanding contracts over 1,000 multiplied by a factor of $2.50
2,000	2,999	$5,600 plus the amount of your number of outstanding contracts over 2,000 multiplied by a factor of $2.00
3,000	4,999	$7,600 plus the amount of your number of outstanding contracts over 3,000 multiplied by a factor of $0.75
5,000	14,999	$9,100 plus the amount of your number of outstanding contracts over 5,000 multiplied by a factor of $0.25
15,000	----------	$11,600 plus the amount of your number of outstanding contracts over 5,000 multiplied by a factor of $0.15

If the annual assessment is greater than $15,000, your annual assessment is $15,000.

Figure: 7 TAC §26.1(b)(3)

Annual Assessment Schedule:

If your fund balance is:		Then your annual assessment is:
Over --	But not over --	
----------	$9,999.99	$200
$10,000.00	$24,999.99	$200 plus the amount of your fund balance over $10,000 multiplied by a factor of .006
$25,000.00	$49,999.99	$300 plus the amount of your fund balance over $25,000 multiplied by a factor of .0045
$50,000.00	$99,999.99	$450 plus the amount of your fund balance over $50,000 multiplied by a factor of .004
$100,000.00	$199,999.99	$650 plus the amount of your fund balance over $100,000 multiplied by a factor of .0035
$200,000.00	$499,999.99	$1,000 plus the amount of your fund balance over $200,000 multiplied by a factor of .003
$500,000.00	$999,999.99	$2,000 plus the amount of your fund balance over $500,000 multiplied by a factor of .00295
$1,000,000.00	----------	$3,500 plus the amount of your fund balance over $1 million multiplied by a factor of . 0029

If the annual assessment is greater than $7,600, your annual assessment is $7,600.

Figure: 7 TAC §90.403(b)(11)

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance $_____ Term _____

Figure: 7 TAC §90.404(a)(7)

TEXAS HOME EQUITY NOTE
(Fixed Rate – Second Lien)

THIS IS AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER_____
ADDRESS _____
_____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____
_____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in my homestead.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution. Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. LATE CHARGE

If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the homestead unless you agree in writing;
d. I sell, lease, or dispose of the homestead;
e. I use the homestead for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance $_____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower $_____ Credit Life, both borrowers $_____ Term _____

Credit Disability, one borrower $_____ Credit Disability, both borrowers $_____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

_____

Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud.

If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than the law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. HOMESTEAD IS SUBJECT TO THE LIEN OF THE SECURITY DOCUMENT

The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law.

20. COMPLAINTS AND INQUIRIES NOTICE

This lender is licensed and examined by the State of Texas – Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems.

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(800) 538-1579

21. COLLATERAL

The homestead described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.404(a)(8)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME EQUITY SECURITY DOCUMENT (Second Lien)

This Security Document is not intended to finance Borrower's acquisition of the Property.

THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note. Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute. The Riders include *(check box as applicable):*

☐ Texas Home Equity Condominium Rider
☐ Texas Home Equity Planned Unit Development Rider
☐ Other: _____

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of My Homestead; (ii) condemnation or other taking of all or any part of My Homestead; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
b. leasehold payments or Ground Rents on My Homestead, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe.

HOMESTEAD

I now occupy and use the property secured by this Security Document as my Texas homestead.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

CONDITIONS CAUSING ACTUAL FRAUD

I commit actual fraud under Section 50(a)(6)(C), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

a. gives you materially false, misleading, or inaccurate information or statements;
b. fails to provide material information regarding the loan; or
c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor;
c. only grants the person's interest in My Homestead under the terms of this Security Document; and
d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

a. received my notice;
b. had a reasonable amount of time to correct the violation; and
c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.

POWER OF SALE

You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to My Homestead that cannot be defeated; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

You will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution.

NON-RECOURSE LIABILITY

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
b. affect your right to any promise or condition of the Loan Agreement.

PROCEEDS

I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender.

NO ASSIGNMENT OF WAGES

I have not assigned wages as security for the Loan Agreement.

ACKNOWLEDGMENT OF FAIR MARKET VALUE

You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

WAIVER OF ADDITIONAL COLLATERAL

I agree that you waive all terms in any of your current or future loan documentation that:

a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;

b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
d. creates a personal guaranty.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

_____(seal)
-Borrower

_____(seal)
-Borrower

(Acknowledgment on following page)

Figure: 7 TAC §90.504(a)(7)

PURCHASE MONEY NOTE
(Fixed Rate – Second Lien)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER_____
ADDRESS _____
_____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____
_____

PROPERTY ADDRESS: _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the property.
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. LATE CHARGE

If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I

prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the Property unless you agree in writing;
d. I sell, lease, or dispose of the Property;
e. I use the Property for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because I default under any debt not secured by the Property.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance $_____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower $_____ Credit Life, both borrowers $_____ Term _____

Credit Disability, one borrower $_____ Credit Disability, both borrowers $_____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

20. COMPLAINTS AND INQUIRIES NOTICE

The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:

In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207
Telephone No.: (800) 538-1579
Fax No.: (512) 936-7610
E-mail: consumer.complaints@occc.state.tx.us
Website: www.occc.state.tx.us

21. COLLATERAL

The collateral described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.504(a)(8)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

PURCHASE MONEY SECURITY DOCUMENT
(Second Lien)

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

☐ Texas Purchase Money Condominium Rider
☐ Texas Purchase Money Planned Unit Development Rider
☐ Other: _____

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, and judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section _____ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this Loan Agreement I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I promise that I own the Property and have the right to grant you an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for your losses that result from a conflicting ownership right in the Property. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the Loan Agreement only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is

a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of the Property is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to the Property against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of the Property, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore the Property unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or you foreclose on the Property, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

You may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect your interest in the Property, you may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter the Property to secure it. To secure the Property, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure the Property. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. You will only do this if your interest in the Property will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect the Property to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in the Property will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, you may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor; and
c. only grants the person's interest in the Property under the terms of this Security Document.

The lien against the Property is a voluntary lien and is a written agreement that shows the consent of each owner. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

You will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell the Property or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due.

Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.

POWER OF SALE

You have a fully enforceable lien on the Property. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, you, at your option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. You may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligation under the loan. I will pay only the cost of recording the release of lien.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement; or
b. affect your right to any promise or condition of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

SUBROGATION

If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR SECURITY DOCUMENTS

You and I request that the holder of any mortgage, security document or other claim with a lien that has priority over this Security Document give you Notice, at your address listed on page 1 of this Security Document, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____(seal)
-Borrower

STATE OF TEXAS
County of _____

Before me, a notary public, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

(Seal)

_____
Notary Public

Figure: 7 TAC §90.604(a)(12)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT AND POWER OF SALE

(Second Lien)

DATE_____

ACCOUNT/CONTRACT NO. _____

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of_____dollars (U.S. $_____) when the Work is completed.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;
2. sell and grant all or part of the Property "AS IS":
    a. to the highest bidder for cash;
    b. subject to prior liens and exceptions to conveyance and warranty; and
    c. without representation or warranty;
3. pay the proceeds of the sale, in this order:
    a. expenses of foreclosure, including Trustee's reasonable fee;
    b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
    c. any amount required by law to be paid; and
    d. any balance to me; and
4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

_____
Owner

_____
Owner

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to __(third party lender)_____.

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

Figure: 7 TAC §90.604(a)(15)

Mechanic's Lien Note
(Second Lien- Home Improvement)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER _____
ADDRESS (include county) _____
_____

DATE OF NOTE _____
BORROWER _____
ADDRESS (include county) _____
_____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount: _____

Terms of Payment (principal and interest): _____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described property: (property description) _____
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

SECURITY FOR PAYMENT

The Deed of Trust and the Lien created in the Contract secure this Note.

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method

as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the Property unless you agree in writing;
d. I sell, lease, or dispose of the Property;
e. I use the Property for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance $_____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower $_____ Credit Life, both borrowers $_____ Term _____
Credit Disability, one borrower $_____ Credit Disability, both borrowers $_____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____
Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____
Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

THIS NOTE SECURED BY A DEED OF TRUST

In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

COMPLAINTS AND INQUIRIES NOTICE

The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(800) 538-1579

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.604(a)(16)

NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.

TEXAS HOME IMPROVEMENT
DEED OF TRUST
ASSIGNMENT OF CONTRACTOR'S LIEN
(Second Lien)

DEFINITIONS

(A) "Borrower" is _____. Borrower's address is _____.

(B) "Contractor" is _____. Contractor's address is _____.

(C) "Lender" is _____. Lender's address is _____.

(D) "Trustee" is _____. Trustee's address is _____.

(E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").

(F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.

(G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.

(H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. $_____) plus interest.

(I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).

(J) "Applicable Law" means all controlling applicable federal, state, and local law.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Deed of Trust.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest" means any party that has taken title to the Property.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."

(S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

a. to permit Lender to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If

there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document.

Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

a. will not have to repay the Note;
b. is not a surety or guarantor; and,
c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

MAILING OF NOTICES TO BORROWER

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

ACCELERATION AND REMEDIES

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

POWER OF SALE

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or

before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

RELEASE

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at Lender's option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed.

SUBROGATION

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

RENEWAL AND EXTENSION

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
b. affect Lender's right to any promise or condition of the Loan Agreement.

DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

REQUEST FOR NOTICE OF DEFAULT
AND FORECLOSURE UNDER SUPERIOR
MORTGAGES OR DEEDS OF TRUST

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By:_____

_____

Printed Name:_____
(Please Complete)

_____

Printed Name:_____
(Please Complete)

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by ___(name of contractor)_____.

_____
Notary Public

(Seal)

Figure: 16 TAC §9.26(a)

TABLE 1

Category of License	Type of Coverage	~~Insurance Policy Endorsement Required~~	Form Required	Statement in Lieu of Required Insurance Filing
All Except P	Workers' Compensation, including Employer's Liability or Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least $150,000; accidental death benefits in the principal amount of at least $100,000; loss of limb or sight on a scale based on principal amount of at least $100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	~~WC42 06 01, Texas Notice of Material Change~~	LPG Form 996A; the Acord™ form;or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 996B
A, B, C, E, O, H, J	General liability coverage including: premises and operations in an amount of at least $300,000 per occurrence and $300,000 aggregate	~~CG 02 05, Texas Changes Amendment; Cancellation Provisions, or Coverage Change Endorsement~~	LPG Form 998A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 998B
A, B, C, E, O	Completed operations or products liability insurance, or both, in an amount of at least $300,000 aggregate	~~CG 02 05, Texas Changes Amendments or Coverage Change Endorsement~~	LPG Form 998A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 998B
D, F, G, I, K, L, M, N, P	General liability coverage including: premises and operations in an amount of at least $25,000 per occurrence with a $50,000 policy aggregate	~~CG 02 05, Texas Changes Amendments or Coverage Change Endorsement~~	LPG Form 998A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 998B
C, E, H, J, Ultimate Consumer	Motor vehicle coverage: minimum $500,000 ($300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	~~TE2326A, Liquefied Petroleum Gas Licensed Motor Vehicle Endorsement Texas Railroad Commission Form Endorsement~~	LPG Form 997A; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information	LPG Form 997B

Figure: 16 TAC §13.62(a)

§13.62. INSURANCE REQUIREMENTS.

TABLE 1

Category of License	Type of Coverage	~~Insurance Policy Endorsement Required~~	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	~~WC42 06 01, Texas Notice of Material Change~~	CNG Form 1996A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	CNG Form 1996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least $150,000; accidental death benefits in the principal amount of at least $100,000; loss of limb or sight on a scale based on principal amount of at least $100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	~~N/A~~	CNG Form 1996A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	N/A
2, 5, 6	General liability coverage including: premises and operations in an amount not less than $25,000 per occurrence and $50,000 aggregate	~~CG 02 05, Texas Changes Amendment, Cancellation Provisions, or Coverage Change Endorsement~~	CNG Form 1998A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	CNG Form 1998B
1, 3, 4	Completed operations and products liability insurance in an amount not less than $300,000 aggregate	~~CG 02 05, Texas Changes Amendments or Coverage Change Endorsement~~	CNG Form 1998A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	CNG Form 1998B
3 and Ultimate Consumer	Motor vehicle coverage: minimum $500,000 combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	~~TE0202A, Cancellation Provision or Coverage Change Endorsement~~	CNG Form 1997A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	CNG Form 1997B

Figure: 16 TAC §14.2031(a)

§14.2031. INSURANCE REQUIREMENTS.

TABLE 1

Category of License	Type of Coverage	~~Insurance Policy Endorsement Required~~	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	~~WC42 06 01, Texas Notice of Material Change~~	LNG Form 2996A; **the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	LNG Form 2996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least $150,000; accidental death benefits in the principal amount of at least $100,000; loss of limb or sight on a scale based on principal amount of at least $100,000; loss of income based on at least 60% of employee's pre-injury income for not less than 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Workforce Commission	~~N/A~~	LNG Form 2996A; **the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	N/A
30, 40, 45	General liability coverage including: premises and operations in an amount of at least $25,000 per occurrence and $50,000 aggregate	~~CG 02 05, Texas Changes Amendments or Coverage Change Endorsement~~	LNG Form 2998A; **the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	LNG Form 2998B
20, 25, 35, 50	Completed operations in an amount of at least $300,000 aggregate	~~CG 02 05, Texas Changes Amendments or Coverage Change Endorsement~~	LNG Form 2998A; **the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	LNG Form 2998B

15, 25, 35	Product liability in an amount of at least $300,000 aggregate	~~CG 02 05, Texas Changes Amendments or Coverage Change Endorsement~~	LNG Form 2998A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	LNG Form 2998B
15, 20, 25, 35, 50	General liability coverage: premises and operations including completed operations in an amount of at least $300,000 per occurrence with a $300,000 policy aggregate	~~CG 02 05, Texas Changes Amendments or Coverage Change Endorsement~~	LNG Form 2998A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	LNG Form 2998B
25, 35, Ultimate Consumer	Motor vehicle coverage: minimum $5,000,000 ($300,000 for state agencies) combined single limit for bodily injuries to or death of all individuals injured or killed in any one accident, and loss or damage to property of others in any one accident.	~~TE0202A, Cancellation Provision or Coverage Change Endorsement~~	LNG Form 2997A**; the Acord™ form; or any other form prepared and signed by the insurance carrier containing all required information**	LNG Form 2997B

Figure: 16 TAC §25.239(d)

$TCRF = \frac{RR * ClassALLOC}{BD}$	
Where:	TCRF = transmission cost recovery factor in dollars per unit, for billing each customer class.
	RR = transmission cost recovery factor revenue requirement, calculated pursuant to subsection (e) of this section.
	ClassALLOC = the customer class allocation factor used to allocate the transmission revenue requirement in the electric utility's last rate case.
	BD = each customer class's annual billing determinant (kilowatt-hour, kilowatt, or kilovolt-ampere) for the previous calendar year.

Figure: 16 TAC §25.239(e)

RR = [revreqt + ATC]*ALLOC	
Where:	revreqt = the sum of the return on TIC, net of accumulated depreciation and associated accumulated deferred income taxes, plus investment-related expenses such as income taxes, other associated taxes, depreciation, and transmission–related miscellaneous revenue credits, but not including operation and maintenance expenses or administrative expenses. The return on TIC shall be calculated by multiplying the TIC by the utility's weighted-average cost of capital (WACC) as established for the utility in a final commission order in a rate proceeding, provided that the order was filed within three years prior to the initiation of the TCRF docket. Otherwise, a proxy WACC shall be used, with a cost of equity of 10%; and the capital structure and cost of debt as reported in the utility's most recent Earnings Monitoring Report filed pursuant to §25.73 of this title (relating to Financial and Operating Reports), adjusted for known and measurable changes.
	Transmission Invested Costs (TIC) is defined in subsection (b)(2) of this section.
	Approved Transmission Charges (ATC) is defined in subsection (b)(1) of this section.
	ALLOC = the utility's Texas retail allocation of transmission revenue requirements, as established in the utility's most recent commission rate case.

Figure: 19 TAC §97.2001(d)

Job Corps Diploma Program Accountability Procedures Manual
August 2007

Background

In 2005, the 79th Legislature enacted statute that allows Job Corps to establish a diploma program to offer a secondary school curriculum, a diploma program, and a General Educational Development (GED) program. The requirements of the Job Corps diploma program are found under Chapter 18 of the Texas Education Code (TEC). Under Chapter 18 of the TEC, the Texas Education Agency (TEA) is required to implement appropriate accountability procedures consistent with Chapter 39 of the TEC, to be used in assigning an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts.

The goals of a Job Corps diploma program are to:

1. serve at-risk students who have not been successful in a traditional school setting;
2. increase student success rates in obtaining and maintaining employment; and
3. decrease future societal costs by offering a diploma program to students who would benefit from Job Corps academic and vocational programs.

Job Corps Diploma Program Student Eligibility Criteria

1. Any person enrolled in the Job Corps Training Program and who does not have a diploma is eligible to enroll in the Job Corps diploma program. Any person enrolled in the diploma program is eligible for programs or services under Chapter 18 of the TEC.
2. A person's eligibility for programs and services under Chapter 18 of the TEC does not exclude the person from being eligible for an education program or service under any other chapter of the TEC.

Requirements of a Job Corps Diploma Program

The diploma program shall:

1. provide a course of instruction that includes the required curriculum under Subchapter A, Chapter 28, of the TEC;
2. require that students enrolled in the diploma program satisfy the requirements of Section 39.025 of the TEC before receiving a diploma; and
3. comply with requirements established in rule to determine compliance with Chapter 18 of the TEC, as determined by the commissioner of education.

Student Records

The Job Corps diploma program must ensure that education records include information used to document the data it submits to TEA, including leaver, dropout, and completion data, that are used in the diploma program accountability procedures and reports. The education records of the diploma program must be made available to the TEA in the conduct of authorized monitoring, investigation, or audit activities.

Purpose of Job Corps Diploma Accountability Procedures

The purpose of the Job Corps accountability procedures is to ensure the implementation of accountability procedures consistent with Chapter 39 of the TEC, where appropriate, to assign an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts under Section 39.072 of the TEC.

In addition to other factors determined by the commissioner of education under Section 39.051 of the TEC, the diploma program accountability procedures consider:

1. student performance on the subject matters assessed by the secondary exit-level assessment instruments, the Texas Assessment of Knowledge and Skills (TAKS) required by Section 39.023(c) of the TEC;
2. dropout rate aggregated for the grade levels served by the diploma program; and
3. completion rate (students who leave the diploma program and receive GED certificates are not counted as completers in the Job Corps diploma program completion rate).

Description of the Job Corps Diploma Program

The state's accountability system is required to rate all districts and campuses serving students in Grades 1-12. Where appropriate, the accountability procedures for the Job Corps diploma programs are consistent with the state's accountability system. However, the accountability procedures for the Job Corps diploma programs necessitate separate accountability procedures that meet the characteristics of the students served in the diploma program and to appropriately evaluate the performance of the diploma program.

The diploma program is designed to expedite the progress of enrolled students toward performing at grade level and completing credits and passing the assessments necessary to attain a diploma. The diploma program accomplishes this goal by providing a variety of instructional services, including accelerated instruction, to meet the needs of students.

Job Corps Diploma Program School Year
The Job Corps diploma program operates on a year round school calendar: ***September 1 - August 31***.
An eligible student may enroll and withdraw at any time during the diploma program school year.

Job Corps Diploma Program Grade and Age Levels Served
The Job Corps diploma program serves Grades 9-12. Students who are eligible to enroll in the Job Corps training program are also eligible to enroll in the Job Corps diploma program. The eligibility age of enrollment in the Job Corps training program is age 16 through 24.

Job Corps Diploma Program Accountability Requirements

1. The diploma program shall comply with applicable state and federal laws and regulations, including Section 504 of Rehabilitative Act of 1973 (§504) and the Individuals with Disabilities Education Act (IDEA).
2. The diploma program must have appropriately certified instructional staff for each subject matter taught in the diploma program.
3. The diploma program must demonstrate required improvement when accountability standards are not met.

Evaluation of Job Corps Diploma Programs

The Job Corps diploma program accountability procedures are used to rate performance of the diploma program. Ratings are based on aggregate performance of the diploma program. Performance results of all students in the diploma program are included in the diploma program's annual performance rating and used in determining the diploma program's rating. Diploma programs receiving ratings under these accountability procedures are evaluated on the following indicators:

1. performance on the exit-level TAKS only
2. diploma program completion rate (Grades 9-12)
3. diploma program dropout rate (aggregate of all grade levels served in the diploma program)

Each of these performance indicators is described in the following section.

Job Corps Diploma Program Accountability Performance Indicators and Procedures

I. TAKS Indicator

Indicator Definition.

1. Total number of exit-level TAKS tests administered to diploma program students any time during the school year (September 1, 2006 - August 31, 2007).

2. Total number of exit-level TAKS tests on which the students met the passing standard.

$$\frac{\text{Tests passed}}{\text{Tests administered}} = \% \text{ Met Standard}$$

Subjects. The exit-level TAKS tests include the following subjects:

English Language Arts
Mathematics
Social Studies
Science

Test Administrations. The exit-level TAKS must be administered to Job Corps diploma program students on the same date and in accordance with the same testing calendar established for the statewide student assessment program. A student's exit-level TAKS answer document must indicate a grade level. The indicator includes results for first-time testers and retesters from all TAKS administrations for the year (September 1 - August 31). The indicator is based on tests rather than students. If a student has results from multiple administrations for the same subject, all are included in the indicator.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. The ethnicity definitions are from the Public Education Information Management System (PEIMS) Data Standards.

Minimum Size Criteria. Performance is always evaluated at the All Students level. Student groups are evaluated if there are *at least 10 tests for the subject area tested.*

Data Source. Test results are provided to the Job Corps diploma program by the test contractor. TEA will calculate the rates.

II. Job Corps Diploma Program Completion Rate Indicator

Indicator Definition. Completion of the Job Corps diploma program is defined as meeting all of the requirements of the diploma program, including passing all portions of the exit-level TAKS. Students participating in an approved adult education GED program and receiving a GED certificate are **not included** in the Job Corps diploma program Completion Rate.

Data used to calculate the Completion Rate:

1. Total number of students who completed the Job Corps diploma program at any time between September 1, 2006 - August 31, 2007 (2006-2007 school year).
2. Total number of students who did not complete the Job Corps diploma program, between September 1, 2006 - August 31, 2007, but who are enrolled in the diploma program on the first school day in September 2007 (the first day of school for the 2007-2008 school year), are counted as "still enrolled" in the diploma program.
3. Total number of students who left the diploma program without completing the program between September 1, 2006 - August 31, 2007 (2006-2007 school year). These students will be reported with the appropriate "leaver" code listed in the Job Corps Diploma Program Leaver Code table.

Job Corps Diploma Program Completion Rate Calculation

$$\frac{\text{diploma recipients + still enrolled}}{\text{students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{diploma program completion rate (\%)}$$

Important: Students who enroll in the Job Corps diploma program for the first time on the first school day in September 2007 are not included in the completion rate for 2006-2007. New enrollees on the first school day in September 2007 will be included in the completion rate for the 2007-2008 school year when the rate is calculated in 2009.

Leavers. The Job Corps diploma program must document the withdrawal of students and maintain on file the appropriate paperwork associated with student withdrawals. The Job Corps diploma program is required to maintain all documentation related to all leaver reason codes at the diploma program site. Merits of leaver documentation are assessed at the time the documentation is requested by the TEA for program monitoring purposes, including verifying data integrity. Determination of the acceptability of documentation is made by the TEA staff reviewing the documentation.

Leaver Documentation. In determining the merits of reported leaver codes, the TEA may review written documentation. When the Job Corps diploma program obtains oral withdrawal information, the information must be verified by telephone and noted in writing by an authorized representative of the Job Corps diploma program.

Withdrawal information should include:

- the date of withdrawal, signature(s) of the adult student or the person responsible for the student, such as the parent or legal guardian
- the date and signature of the diploma program principal or designee such as a staff member who serves as the school's registrar or attendance clerk
- the leaver code and statement of reason for withdrawal
- the student's destination
- documentation of the telephone call to verify the withdrawal information that was obtained orally
- documentation of enrollment in another public or private school (i.e., request for records)
- documentation of the date on which the student's enrollment and access was activated for the distance education school (i.e., e-mail notification of log-in access)

The **Job Corps Diploma Program Leaver Codes** are provided below and in the Appendix of this document.

Leaver Code	Explanation of Reason
01 – Student completed Job Corps diploma requirements	Use for students who meet all Job Corps diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2006- August 31, 2007).
02 – Student withdrew from Job Corps Training Program to enter an institution of higher education or technical institution	Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate or certify that the student is enrolled under a planned degree or certificate program for at least 3 semester hours or one class.
03 – Student is issued a GED certificate on or before - August 31 of the same school year	Student received a GED certificate on which the issue date ison or before August 31, 2007.
04 – Student withdrew from Job Corps Training Program to enroll in a public school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a **public** school in Texas.
05 – Student withdrew from Job Corps Training Program to enroll in another Job Corps diploma program in Texas	Student withdrew from this Job Corps diploma and training program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas.
06 – Student withdrew from Job Corps Training Program to enroll in a private school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a **private** school in Texas.
07 – Student withdrew from Job Corps diploma program to enroll in the Job Corps accredited distance education school	Student withdrew from the Job Corps diploma program to enroll in the Job Corps distance education school that is accredited by a regional and national accrediting agency recognized by the U.S. Department of Education. Documentation must show activation of the student's enrollment.
08 – Student died while enrolled in the diploma program	This code requires documentation of the student's death.
09 – Other	This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Completion Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the Job Corps diploma program at any time during the school year (September 1 – August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the Job Corps diploma program is not evaluated on Completion Rate.

Data Source. Completion data are reported for the prior school year. For example, completion data submitted in December 2007 will be for the September 1, 2006 - August 31, 2007 school year. The Job Corps diploma program must submit data to the TEA by **the first Monday in December 2007**. TEA will calculate the rates.

III. Job Corps Diploma Program Dropout Rate Indicator

The Job Corps Diploma Program Dropout Rate indicator is based on the total number of students participating (enrolled) in the diploma program during the Job Corps diploma program school year: September 1 - August 31. The dropout rate is an aggregate of Grades 9-12 dropouts as a percent of all students enrolled in the diploma program in Grades 9-12 from September 1 - August 31.

Indicator Definition. A student is counted as a dropout if the student was enrolled in the Job Corps diploma program at any time during the school year (September 1, 2006 - August 31, 2007) and is not enrolled in the diploma program on the first school day in September 2007.

Exceptions: A student is **not** counted as a dropout if the student:

- received diploma by August 31 of the same school year;
- died;
- received a GED certificate by August 31 of the same school year;
- withdrew to enroll in college or a technical institution;
- withdrew to enroll in a Texas public or private school providing secondary education or another Job Corps Diploma Program in Texas; or
- withdrew from the Job Corps diploma program to enroll in the Job Corps distance education school that is accredited by a regional and national accrediting agency recognized by the U.S. Department of Education.

Diploma Program Dropout Rate Calculation:

$$\frac{\text{dropouts (leaver code 09)}}{\text{students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{diploma program dropout rate (\%)}$$

Examples of Dropout and Non-Dropout Definitions:

1. A student who withdraws from the diploma program on November 15, 2006, and re-enrolls in the diploma program on May 15, 2007, does not receive a diploma from the diploma program by August 31, 2007, and is enrolled on first school day in September 2007 is not a dropout for 2006-2007.
2. A student who withdraws from the diploma program on June 15, 2007, and enrolls in the GED program on July 15, 2007, and receives a GED certificate on August 1, 2007, then re-enrolls in the diploma program on August 15, 2007, and is enrolled on the first school day in September 2007 is not a dropout for 2006-2007.
3. A student who withdraws from the diploma program on May 15, 2007, and re-enrolls in the diploma program on June 15, 2007, and does not complete the diploma program by August 31, 2007, and is not enrolled on the first school day in September 2007 is reported as a dropout for 2006-2007.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Dropout Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the diploma program at any time during the school year (September 1 - August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the diploma program is not evaluated on Dropout Rate.

Data Source. Dropouts are reported for the prior school year. For example, dropout data submitted in December 2007 will be for the September 1, 2006 - August 31, 2007 school year. The Job Corps diploma program must submit data to the TEA by **the first Monday in December 2007**. TEA will calculate the rates.

How Students Are Counted for the Job Corps Diploma Program Accountability Performance Indicators

Student Enrollment Status and the "One-day" Snapshot Date
For accountability purposes, the Job Corps diploma program has a "one-day" snapshot date. The "one-day" snapshot date is the **first school day in September**. On the first school day in September 2007, the diploma program must assign an enrollment status and grade level classification (9, 10, 11, or 12) to each student who was enrolled in the diploma program at any time during the 2006-2007 school year.

The enrollment statuses (and leaver codes) are:

1. diploma recipient: the student was awarded a Texas high school diploma on or before August 31, 2007 (leaver code 01);
2. still enrolled: the student was still enrolled in the Job Corps diploma program on the first school day in September 2007 (no leaver code);
3. leaver: the student
    a. passed the GED test and received a GED certificate on or before August 31, 2007 (leaver code 03);
    b. withdrew from the Job Corps diploma program to enroll in another educational setting (leaver code 02, 04, 05, 06, or 07);
    c. died (leaver code 08);
4. dropout: the student left the Job Corps diploma program for any reason not categorized above (leaver code 09).

Each student enrolled in the Job Corps diploma program in the 2006-2007 school year should fit into **one** of the above four categories.

Counting Leavers and Students Who Re-enroll. Any student enrolled in the diploma program in the 2006-2007 school year is assigned only one leaver code, regardless of the number of times or reasons for withdrawing and re-enrolling in the diploma program. The student's leaver code must reflect the student's last leaver status as of the first school day in September.

Counting Diploma Recipients. **August 31st** is the date by which students must receive their diplomas to be counted as diploma recipients of the Job Corps diploma program.

Job Corps Diploma Program Data Collection and Reporting

By **the first Monday in December** of each school year, the diploma program is required to submit to TEA certain data for use in determining the annual performance rating of the diploma program.

The **"one-day" snapshot date** used to determine the data is **the first school day in September.**

Data Collection Form

The Job Corps diploma program is required to submit and correct data in the format determined by TEA. The data collection form is included in the Appendix of this document. The collection of data is reviewed annually and revised, as necessary, to assign an annual performance rating to the diploma program. The Job Corps diploma program must retain auditable individual student data and documentation for activities such as monitoring or investigations.

Requests for Extensions to Submission Deadline

Extenuating circumstances may occur that preclude the diploma program from submitting its data to TEA on time. These extenuating circumstances are limited to circumstances that are not within the control of the diploma program including natural disasters or catastrophes and for which there are no practical options to providing the data to TEA. Extensions for these circumstances are considered and granted on a case-by-case basis. If the diploma program anticipates that it will not be able to meet the due date, a written statement signed by the director of the Job Corps diploma program (or designee) must be sent to the TEA no later than 30 calendar days from the due date and include the following information.

- the reasons for the delay or anticipated delay in submitting the data;
- the plan of action for resolving the existing problems;
- a request for an extension; and
- a commitment to a specific date for submitting the data to TEA. Extensions greater than 30 days after the TEA due date will not be approved unless it is substantiated that the circumstances are extreme and for which no alternative is available.

Requests for extension are to be mailed or faxed to:

Associate Commissioner
School District Services
Texas Education Agency
1701 N. Congress Ave.
Austin, TX 78701-1494
FAX (512) 475-3665

The TEA division responsible for school district services will notify the Job Corps diploma program director (or designee) whether the extension was or was not granted. If the data submission is delayed and communication is not received from the diploma program, the diploma program campus name will be forwarded to TEA General Counsel for further action.

Correcting Data Submission

The diploma program may find it necessary to correct data submitted. All diploma program resubmissions must be submitted to the TEA no later than the **last school day in January**. If extenuating circumstances arise and the diploma program is not able to correct its data within this timeline, the same procedures used to request an extension to data submission (above) must be followed.

Release of Diploma Program Accountability Preview Data Tables and Ratings

By **August 1 of each year**, the Job Corps diploma program **accountability rating will be released**.

The Job Corps diploma program will not have access to their data tables or ratings electronically, such as through a TEA Secure Environment (TEASE). TEA will provide accountability data and rating reports to the diploma program by certified U.S. Mail. TEA will not fax or email accountability data reports and ratings.

Job Corps Diploma Program Performance Standards

This section prescribes the standards and criteria for each performance indicator used to evaluate the diploma program. TEA staff will annually recommend to the commissioner of education the appropriate standards for each performance indicator listed below to meet the characteristic of students served in the diploma program.

1. Exit-level TAKS Passing Standard
2. Diploma Program Completion Rate Standard
3. Diploma Program Dropout Rate Standard

For students receiving special education services, the standard for meeting Admission, Review, and Dismissal (ARD) expectations will continue to be set locally, consistent with state law. Students receiving services under an individualized education plan (IEP) and taking TAKS will be included in the TAKS indicator.

The diploma program must demonstrate required improvement when accountability standards are not met.

The standards for each performance indicator will be established for 2007-2008, based on data collected for 2006-2007.

Job Corps Diploma Program Accountability Standards for Rating Issued in August 2008

Indicator	Rating	
	2005-2006 *Report data*	**2006-2007**
Exit-level TAKS	*Not Evaluated*	Acceptable 45%
Diploma Program Completion Rate Diploma recipients + still enrolled / Students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts) = completion rate (%)	*Not Evaluated*	Acceptable -*75%*
Diploma Program Dropout Rate dropouts (leaver code 09) / students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts) = dropout rate (%) Students dropping out in 2005-2006 are reported in 2006-2007 Students dropping out in 2006-2007 are reported in 2007-2008 *"Dropout" is defined in the Job Corps Diploma Program Accountability Procedures.*	*Not Evaluated*	Acceptable -*10%*

Job Corps Diploma Program Accountability Ratings

The diploma program rated under the Job Corps diploma program accountability procedures is assigned one of the three ratings listed below:

1. *Acceptable*
2. *Unacceptable*
3. *Not Evaluated*

Acceptable or Unacceptable	If there are no exit-level TAKS results, the diploma program will not be rated. If there are exit-level TAKS results, the program will be rated if the program meets the minimum size criteria.
Not Evaluated	Assigned to diploma programs with no exit-level TAKS results or to programs that do not meet the minimum size criteria.

Special Analysis for Small Numbers

The TEA conducts special analysis when very small amounts of data are used in determining the performance rating of the Job Corps diploma program. For special analysis, the Job Corps Diploma Program accountability procedures use comparative data from the prior year.

Job Corps Diploma Program Appeal Process

Preview Data Tables

The diploma program will receive a preview of its data table as determined by the TEA and described in the Job Corps Diploma Program Accountability Procedures Manual. After receipt of the data table, the diploma program may appeal the rating to the commissioner of education or the commissioner's designee. For the Job Corps diploma program, the Associate Commissioner of School District Services is designated to review the appeal and recommend the final rating to the commissioner of education.

Appeal Ratings

1. The diploma program may appeal the data or calculation error attributable to the TEA or the test contractor for the student assessment program.
2. Problems due to the diploma program's errors in data submission or on TAKS answer sheets are considered on a case-by-case basis.
3. The statutes permit consideration of data reporting quality in evaluating the merits of an appeal. Poor data quality is not a valid reason to appeal the accountability rating. Only appeals that would result in a changed rating will be considered.

How to Appeal a Rating

The diploma program appealing an accountability rating must submit to the commissioner of education a letter that includes the following:

1. A statement that the letter is an appeal of the [YEAR] Job Corps diploma program accountability rating;
2. The name and ID number of the diploma program for which the appeal is being submitted.
3. The specific indicator(s) appealed.
4. The problem, including details of the data affected and what caused the problem.
5. If applicable, the reason(s) why the cause of the problem is attributable to the TEA or the test contractor for the student assessment program.
6. The reason(s) why the change would result in a different rating, including calculations that support the different outcome.
7. A statement that all information included in the appeal is true and correct to the diploma program's best knowledge and belief.
8. The signature of the official representative of the diploma program.

Additional Appeal Procedures

- The Job Corps diploma program is provided one opportunity to appeal each indicator.
- When student-level information is in question, supporting information must be provided for review, including the student's name and identification number.
- The diploma program must ensure all relevant information is included in the appeal. The TEA will not contact the diploma program for additional materials.
- The appeal letter must be postmarked by the date determined by the TEA. Appeals postmarked after this date will not be considered.
- The appeal letter must be addressed to Commissioner of Education and mailed to Job Corps Diploma Program Accountability Procedures; Office of School District Services; Texas Education Agency; 1701 N. Congress Ave.; Austin, TX; 78701-1494.

How an Appeal Is Processed and Decision Issued

1. The details of the appeal are entered into a database for tracking purposes.

2. TEA staff evaluates the request using TEA data sources to validate the information to the extent possible and all relevant data.
3. The Division of School District Services prepares and forwards a recommendation to the commissioner of education.
4. The commissioner of education makes the final decision.
5. The diploma program is notified in writing of the commissioner's decision and the reason for the decision.
6. The decision of the commissioner is final and is not subject to further review or appeal.
7. If an appeal is granted, the data upon which the appeal was based will not be modified. TEA reports that reflect accountability data, must report the data as they are submitted to the TEA. Accountability data are subject to review by the Office of the State Auditor.
8. The commissioner of education will respond in writing to each appeal. The letter from the commissioner serves as notification of the official rating for the diploma program.

Final Ratings

After the resolution of all appeals, the TEA will assign a final rating to the diploma program.

On-site Investigations

Under Section 39.074 of the TEC, the commissioner may (1) direct the TEA to conduct on-site investigations at any time to answer any questions concerning a program, including special education, required by federal law or for which the program receives federal funds; and (2) raise or lower the performance rating as a result of the investigation. The manner in which the TEA will conduct the on-site investigation is described under Section 39.076 of the TEC and 19 TAC §97.1033. In conducting the on-site investigation, data other than the data reported through the data collection form may be reviewed by the TEA to determine compliance with applicable federal and state laws and rules. The diploma program is required to maintain at its program facility, the education records and data required in meeting TEA reporting requirements. The Job Corps diploma program must retain auditable individual student data and documentation for activities such as monitoring and investigations.

Required Improvement

Required Improvement compares prior-year performance to current-year performance. In order to conduct this comparison, All Students or any student group must meet the minimum size requirement for the prior year.

Improvement Standards for the diploma program will be determined for 2008-2009 based on data submitted for 2006-2007 and 2007-2008.

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must demonstrate required improvement within two school years.

Performance Indicator	Standard of Improvement Required
TAKS Measure	a standard of _(*TBD*)_% within two years
Diploma Program Completion Rate	a standard of _(*TBD*)_% within two years
Diploma Program Dropout Rate	a decline in the rate to be at _(*TBD*)_% within two years

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must meet the standards of improvement on all deficient performance indicators. If the improvement standard is met for every deficient measure, then the diploma program is assigned an *Acceptable* rating.

Sanctions

Based on the nature of and severity of the problem(s) identified, the commissioner of education has the authority to take action under Chapter 39 of the TEC, including closure of the diploma program.

Sanctions may be applied as a result of:

- problems identified through the application of system safeguards;
- unacceptable performance for two consecutive years; or
- the findings of an on-site investigation authorized under Section 39.074 of the TEC.

Appendix

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TEXAS EDUCATION AGENCY

Job Corps Diploma Program
2007-2008 Data Collection Form for 2006-2007 Data Year

Please PRINT or TYPE:

Job Corps Diploma Program Name _____ Job Corps Diploma Program Number _____

Job Corps Diploma Program Director's Name _____ Telephone Number _____

The following signature affirms that the undersigned has submitted all required data and has taken measures to verify the accuracy and the authenticity of the data being submitted for the Job Corps Diploma Program.

Job Corps Diploma Program Director's Signature _____ Date _____

Authority for Data Collection: Texas Education Code, §18.006 - Job Corps Diploma Program.

Planned Use of the Data: For **2007-2008 Diploma Program Accountability Ratings** for the Job Corps Diploma Program issued by the Commissioner in compliance with Chapter 18 of the Texas Education Code.

Instructions: Complete **ONE** report for the Job Corps diploma program using **2006-2007 school year data.** Complete this form regardless of the diploma program enrollment size. Do not leave any boxes blank and do not write "not applicable." If there is no number to report in a box, enter "0" (zero) in that box. Do not attach any additional documents to this report. ***See additional instructions below for each item.***

Submission Timeline: This completed and signed form must be **postmarked by the first Monday in December 2007.** Mail form to:

Texas Education Agency
Associate Commissioner
School District Services
1701 N. Congress Avenue
Austin, Texas 78701-1494

Fax and email submissions are not accepted. Maintain a copy of this report and any supporting documentation for your records. Texas Education Agency (TEA) will send the Job Corps Diploma Program Director a written confirmation of receipt.

Questions: If there are any questions regarding the data submission, please call School District Services at (512) 463-5889. For submission corrections, please refer to the Correcting Data Submission section of the ***Job Corps Diploma Program Accountability Procedures Manual.***

Please note that information submitted to TEA is subject to release in accordance with Chapter 552 of the Texas Government Code (Texas Public Information Act), and includes the Family Educational Rights and Privacy Act (FERPA).

GROUP	All Students	African American	Hispanic	White
IMPORTANT: In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities.				
1. **Total Students** who were **enrolled in the Job Corps diploma program** at any time between September 1, 2006, and August 31, 2007. If a student withdrew from the diploma program and later re-entered it, count the student only once.				
2. **Diploma Recipients:** Students in #1 who were **awarded a Job Corps diploma** at any time between September 1, 2006, and August 31, 2007 (Leaver Code 01). See ***Leaver Code*** Table on page 2. Completing the diploma program means meeting all diploma program requirements and passing all portions of the exit-level TAKS.				

continues

GROUP	All Students	African American	Hispanic	White
IMPORTANT: In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities.				
3. **Still Enrolled:** Students in #1 who did not complete the diploma program (including did not pass the exit-level TAKS) and who are **still enrolled in the diploma program** on the first school day in September 2007 (no Leaver Code). "Still enrolled" is defined as a student who was enrolled during the 2006-2007 school year (regardless of whether the student withdrew and re-enrolled) and is enrolled on the first school day in September 2007.				
4. **Leavers:** Students in #1 who did not complete the diploma program, were not enrolled in the diploma program on the first school day in September 2007, and were withdrawn under any of the following *Leaver Codes: 02, 03, 04, 05, 06, 07,or 08.* A student with one of these seven (7) leaver codes is not counted as a dropout for the diploma program accountability system. Any student enrolled in the diploma program in the 2006-2007 school year is assigned only **one** leaver code on the "one-day" snapshot date: first school day in September 2007. Regardless of the number of times or reasons the student withdrew and re-enrolled in the diploma program, assign the student one leaver code and count the student only once.				
5. **Dropouts**: Students in #1 who did not complete the diploma program, were not enrolled on the first school day in September 2007, and were withdrawn under Leaver Code 09.				
6. **Total Students** who **participated in Job Corps Training Program** at any time between September 1, 2006, and August 31, 2007, **and** who entered the training program without a high school diploma, **and** who did not participate in the diploma program. If a student withdrew from the training program and later re-entered it, count the student only once.				

Leaver Code	Explanation of Reason
01 – Student completed Job Corps diploma requirements	Use for students who meet all diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2006 - August 31, 2007).
02 – Student withdrew from Job Corps Training Program to enter an institution of higher education or technical institution	Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate or certify that the student is taking classes under a planned degree or certificate program for at least 3 semester hours or one class.
03 – Student is issued a GED certificate on or before by August 31 of the same school year	Student received a GED certificate on which the issue date is on or before August 31, 2007.
04 – Student withdrew from Job Corps Training Program to enroll in a public school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a **public** school in Texas.
05 – Student withdrew from Job Corps Training Program to enroll in another Job Corps diploma program in Texas	Student withdrew from the Job Corps diploma program and training program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas.
06 – Student withdrew from Job Corps Training Program to enroll in a private school in Texas	Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a **private** school in Texas.
07 – Student withdrew from Job Corps diploma program to enroll in the Job Corps distance education school.	Student withdrew from the Job Corps diploma program to enroll in the Job Corps distance education school that is accredited by a regional and national accrediting agency recognized by the U.S. Department of Education. Documentation must show activation of the student's enrollment.
08 – Student died while enrolled in the diploma program	This code requires documentation of the student's death.
09 – Other	This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

Case Title and Court: Settlement Agreement in Harris County, Texas and the Texas Commission on Environmental Quality v. Triple B Services; Cause No. 2006-22190, 127th Judicial District, Harris County, Texas.

Background: This suit alleges violations of the Texas Clean Air Act resulting from the improper use of a trench burner in Harris County, Texas. The Defendant is Triple B Services. The suit seeks injunctive relief, civil penalties, attorney's fees, and court costs. The Clean Air Act violations are for air pollution and air nuisance.

Nature of Settlement: The settlement awards $13,500.00 in civil penalties and $600.00 in attorney's fees to the State and $13,500.00 in civil penalties and $1,400.00 in attorney's fees to Harris County. The Final Judgment orders the Defendants to comply with the Texas Clean Air Act, the Texas Water Code, and the environmental rules and regulations promulgated by the TCEQ, and to provide Harris County with information used in the enforcement of the Injunction.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For questions about this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200703816
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: August 22, 2007

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Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Assistive and Rehabilitative Services, announces the issuance of Request for Proposals (RFP) #303-8-10095. TBPC seeks a 5-year lease of approximately 6,161 square feet of office space in the Beaumont area, Jefferson County, Texas.

The deadline for questions is August 17, 2007; and the deadline for proposals is August 31, 2007 at 3:00 p.m. The award date is September 7, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=72319.

TRD-200703668
Kay Molina
General Counsel
Texas Building and Procurement Commission
Filed: August 17, 2007

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of August 10, 2007, through August 16, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on August 22, 2007. The public comment period for this project will close at 5:00 p.m. on September 21, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Dominion Exploration and Production, Inc.; Location: The project is located along Levee Road, in Big Reservoir Marsh, just north of the Gulf Intracoastal Waterway and Salt Bayou, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Star Lake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 388755; Northing: 3286495. Project Description: The applicant proposes to grade and fill a 2.86-acre pad site for drilling operations. The work includes excavation and sidecasting of 200 cubic yards of native material for ring levee construction. Thirty-eight pilings will be driven for rig support followed by placement of approximately 1000 (8' x 12' x 8') timber

mats. After drilling is complete, mats will be removed and replaced with approximately 2,777 cubic yards of caliche gravel. CCC Project No.: 07-0272-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-578 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Dominion Exploration and Production, Inc.; Location: The project is located along Levee Road, in Big Reservoir Marsh, west of Monteaux Pond and Goose Gully, and north of the Gulf Intracoastal Waterway, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Alligator Hole Marsh and Star Lake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 388460; Northing: 3289736. Project Description: The applicant proposes to grade and fill a 2.92-acre pad site for drilling operations. The work includes excavation and sidecasting of 200 cubic yards of native material for ring levee construction. Thirty-eight pilings will be driven for rig support followed by placement of approximately 1000 (8'x 12' x 8') timber mats. After drilling is complete, mats will be removed and replaced with approximately 2,777 cubic yards of caliche gravel. CCC Project No.: 07-0273-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-579 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Dominion Exploration and Production, Inc.; Location: The project is located along Levee Road, south of Willie Slough in Big Reservoir Marsh, northeast of Monteaux Pond and Goose Gully, and north of the Gulf Intracoastal Waterway, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Alligator Hole Marsh, Big Hill Bayou, Clam Lake, and Star Lake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 3391752; Northing: 33291331. Project Description: The applicant proposes to grade and fill a 2.60-acre pad site for drilling operations. The work includes excavation and sidecasting of 200 cubic yards of native material for ring levee construction. Thirty-eight pilings will be driven for rig support followed by placement of approximately 1000 (8'x 12' x 8') timber mats. After drilling is complete, mats will be removed and replaced with approximately 2,777 cubic yards of caliche gravel. CCC Project No.: 07-0274-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-582 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Dominion Exploration and Production, Inc.; Location: The project is located along Levee Road, at the nexus of Goose Gully and Willie Slough in Big Reservoir Marsh, north of the Gulf Intracoastal Waterway, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Alligator Hole Marsh and Star Lake, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 386213; Northing: 3291659. Project Description: The applicant proposes to grade and fill a 1.89-acre pad site for drilling operations. The work includes excavation and sidecasting of 200 cubic yards of native material for ring levee construction. Thirty-eight pilings will be driven for rig support followed by placement of approximately 1000 (8'x 12' x 8') timber mats. After drilling is complete, mats will be removed and replaced with approximately 2,777 cubic yards of caliche gravel. CCC Project No.: 07-0275-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-583 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200703800
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 21, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/27/07 - 09/02/07 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/27/07 - 09/02/07 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/07 - 09/30/07 is 8.25% for Consumer/Agricultural/Commercial credit through $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 09/01/07 - 09/30/07 is 8.25% for Commercial over $250,000.

[1]Credit for personal, family, or household use.

[2]Credit for business, commercial, investment, or other similar purpose.

TRD-200703773
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 21, 2007

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Credit Union Department

Application for Foreign Credit Union to Operate a Branch Office

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from TruWest Credit Union, Scottsdale, Arizona to operate a Foreign (out-of-state) Branch Office at 201 University Oaks Boulevard, Round Rock, Texas 78664.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200703805
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2007

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Applications for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application was received from Service 1st Credit Union (Greenville) seeking approval to merge with Nordstrom Sulphur Springs Federal Credit Union (Sulphur Springs), with Service 1st Credit Union being the surviving credit union.

An application was received from Horizon Credit Union (Portland) seeking approval to merge with Security Service Federal Credit Union (San Antonio), with the latter being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200703804
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2007

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Service 1st Credit Union, Greenville, Texas to expand its field of membership. The proposal would permit persons who live or work within the boundaries of Hopkins County, Texas, to be eligible for membership in the credit union.

An application was received from America's Credit Union, Garland, Texas to expand its field of membership. The proposal would remove exclusionary language which protects the field of membership of certain occupation- or association-based credit unions that have an office in Rockwall County, Dallas County, or Collin County, Texas.

An application was received from TruWest Credit Union, Scottsdale, Arizona to expand its field of membership in Texas. The proposal would permit persons who live, work, or attend school in Williamson County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200703803
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2007

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership--Approved.

EECU, Fort Worth, Texas--See *Texas Register* issue dated March 30, 2007 (32 TexReg 1924).

EDS Credit Union, Plano, Texas--See *Texas Register* issue dated May 25, 2007 (32 TexReg 2896).

Smart Financial Credit Union, Houston, Texas--See *Texas Register* issue dated May 25, 2007 (32 TexReg 2896).

Application for a Merger or Consolidation--Approved.

G.H. & H. Employees Credit Union (Dickinson) and SPCO Federal Credit Union (Houston)--See *Texas Register* issue dated April 27, 2007 (32 TexReg 2389).

TRD-200703806
Harold E. Feeney
Commissioner
Credit Union Department
Filed: August 22, 2007

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Texas Education Agency

Request for Applications Concerning Early College High School Grant, Cycle 2

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-121 from school districts or open-enrollment charter schools and institutions of higher education to create a new Early College High School.

Eligibility Criteria. An Early College High School must meet all of the following eligibility requirements. (1) The Early College High School is an autonomous high school located on a college or university campus, within a larger high school, or on an independent campus. If a campus is proposed that would serve Grades 6 - 12, all students must be served on the same campus and a program of study must be articulated for each grade level. (2) The district in which the high school is located and the postsecondary institution on which the school is situated have entered into an agreement or adopted procedures that address the budget of the school, the sources of revenues, and the responsibilities of each partner for specific costs related to the Early College High

School. (3) Joint decision-making procedures are in place to enable the high school and the higher education partner to plan and implement a coherent program across institutions. The budget for the high school reflects resources for supporting the ongoing collaboration between the high school and the higher education institution during and beyond the period of the grant. (4) The high school and the higher education partner provide academic and support services to students including, but not limited to, advisory structures, tutoring, personalized learning communities, or guidance counseling, to ensure student success in both high school and college-level coursework. Students have access to the college's facilities, resources, and services, such as sports facilities, writing centers, science labs, libraries, technology centers, and extracurricular activities as appropriate. (5) The school targets for admission students who are at risk of not graduating from high school within four years of entering ninth grade. Schools must be serving traditionally under-served populations with members of student groups who have high percentages of at-risk, economically disadvantaged students and first-time college goers. (6) Students in the Early College High School take a rigorous academic program of study that enables them to complete high school within five years of entering ninth grade and at the same time obtain an associate's degree or 60 semester credit hours toward a baccalaureate degree. An academic plan is in place in the high school showing how students will progress toward this goal. The plan lists high school, college, and dual credit courses by semester and year for each of the five years and indicates when students will satisfy district and state examination requirements. (7) If the Early College High School is not located on a college or university campus, the school has strategies and activities in place that foster a distinct college-going culture, including campus visits, enrichment programs that allow for exposure to and interaction with university faculty, or weekend, Saturday, or summer programs on the college campus.

Only one application per Early College High School may be submitted.

Description. The purpose of the Early College High School Grant is to ensure the success and sustainability of Early College High Schools, which give students who typically would not pursue postsecondary studies an opportunity to complete high school and sixty hours of college-level coursework in an academically supportive environment.

Dates of Project. The Early College High School Grant will be implemented during the 2007-2008, 2008-2009, and 2009-2010 school years. Applicants should plan for a starting date of no earlier than March 1, 2008, and an ending date of no later than May 31, 2010. Projects will not be extended beyond this date under any circumstances.

Project Amount. Funding will be provided for approximately 5 - 10 projects. For the 2007-2008 school year, each project will receive a maximum of $120,000 to plan a new Early College High School. In the second year, each project will receive a maximum of $120,000 for an Early College High School serving Grades 9 - 12 or $140,000 for an Early College High School serving Grades 6 - 12. In the third year, each project will receive a maximum of $240,000 for an Early College High School serving Grades 9 - 12 or $280,000 for an Early College High School serving Grades 6 - 12. Funding will be based on student enrollment in the district at the time of application. Project funding in the second and third years will be based on satisfactory progress of the first-year objectives and activities and on appropriations by the Texas Legislature and budget approval by the commissioner of education.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-07-121 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://burleson.tea.state.tx.us/GrantOpportunities/forms for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Dale Fowler, Division of Education Initiatives, Texas Education Agency, (512) 936-6060. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://burleson.tea.state.tx.us/GrantOpportunities/forms.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday, October 23, 2007, to be eligible to be considered for funding.

TRD-200703808
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: August 22, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 1, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 1, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 100 Century Oaks, Ltd. dba Wortham Oaks; DOCKET NUMBER: 2007-0489-MLM-E; IDENTIFIER: RN104151444; LOCATION: Bexar County, Texas; TYPE OF FACILITY: residential subdivision construction site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §330.15(a)(3), Edwards Aquifer Protection Program (EAPP) Identification Number 2130.00, Special Condition Number VII, and the Code, §26.121(c), by failing to prevent the unauthorized discharge of paint over-spray wastes; 30 TAC §213.4(k) and EAPP Identification Number 2130.00, Special Condition Number II, by failing to provide operational sedimentation/filtration basins; 30 TAC §213.4(k) and EAPP Identification Number 2130.00, Standard Condition Number 6, by failing to construct and maintain silt fences and rock berms; 30 TAC §213.4(k) and EAPP Identification Number 2130.00, Standard Condition Number 6, by failing to provide sedimentation/filtration basins for use as temporary sedimentation basins during construction; 30 TAC §213.4(k) and EAPP Identification Number 2130.00, Standard Condition Number 6, by failing to install or maintain inlet protection throughout the site; 30 TAC §213.4(j)(2) and EAPP Identification Number 2130.00, Standard Condition Number 4, by failing to submit and obtain approval of modifications to an Edwards Aquifer protection plan; 30 TAC §213.4(k) and §330.15(a)(3) and EAPP Identification Number 2130.00, Standard Condition Number 6, by failing to properly install and/or maintain concrete truck washout pits; 30 TAC §213.4(k) and EAPP Identification Number 2130.00, Special Condition Number VII, by failing to comply with the approved plan by conducting unauthorized regulated activities; and 30 TAC §213.4(k) and EAPP Identification Number 2130.00, Standard Condition Number 11, by failing to remove accumulated sediments and dirt ramps from paved streets, which function as a part of the storm water drainage system; PENALTY: $33,500; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: City of Corinth; DOCKET NUMBER: 2007-0684-WQ-E; IDENTIFIER: RN101217156; LOCATION: Denton County, Texas; TYPE OF FACILITY: wastewater collection system; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of raw wastewater; PENALTY: $3,850; Supplemental Environmental Project (SEP) offset amount of $3,850 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: City of El Paso; DOCKET NUMBER: 2007-0326-MSW-E; IDENTIFIER: RN100215599; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: inactive Type I municipal solid waste landfill; RULE VIOLATED: 30 TAC §330.371(a)(2) (formerly 30 TAC §330.56(n)(1)(B)), by failing to prevent the concentration of methane gas from exceeding 5% by volume; 30 TAC §330.371(g)(3) (formerly 30 TAC §330.56(n)(7)(C)), by failing to have a landfill gas management plan that includes a backup plan; 30 TAC §330.143(b)(1)(B) (formerly 30 TAC §330.122)), by failing to post yellow landfill buffer zone markers; and 30 TAC §§205.6, 334.22(a) and 334.128(a) and the Code, §5.702, by failing to pay outstanding general permits storm water fee; PENALTY: $23,100; Supplemental Environmental Project (SEP) offset amount of $18,480 applied to Keep Texas Beautiful-Cleanup of Unauthorized Trash Dumps; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-0519-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Permit Number 18978/PSD-TX-752M3, Special Condition Number 1, and Texas Health & Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $40,000; Supplemental Environmental Project (SEP) offset amount of $20,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: John Nguyen and Thanh Mai Chau dba Handi Plus 47; DOCKET NUMBER: 2007-0751-PWS-E; IDENTIFIER: RN102315470; LOCATION: Spring, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement or provide an approved exception to the requirement that covers the land within 150 feet of the water system's well; 30 TAC §290.46(v), by failing to securely install all water system electrical wiring; and 30 TAC §290.41(c)(3)(O), by failing to properly protect the well unit with an intruder-resistant, locked, ventilated well house to exclude possible contamination or damage; PENALTY: $994; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2007-0581-MLM-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§106.4(c), 113.120, 122.143(4), and 335.4, 40 Code of Federal Regulations (CFR) §63.135(b), Federal Operating Permit (FOP) Number O-02288, Special Terms and Conditions Numbers 1D, 16 and 17, the Code, §26.121(c), and THSC, §382.085(b), by allowing unauthorized emissions and causing an unauthorized discharge to the soil; and 30 TAC §116.115(c) and §122.143(4), FOP Number O-01320, Special Terms and Conditions Number 13, New Source Review (NSR) Permit Number 5952A, Special Condition 1, and NSR Permit Number 19823, Special Condition Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $23,775; Supplemental Environmental Project (SEP) offset amount of $11,887 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Clean School Buses; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Olney Construction Company, Inc.; DOCKET NUMBER: 2007-0650-WQ-E; IDENTIFIER: RN104900014; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number TXR15AT05, Part III, Section F(2)(a)(ii), by

failing to properly maintain storm water structural control measures according to the manufacturer's or designer's specifications; and 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES Permit Number TXR15AT05, Part III, Section F(2)(a)(iv), by failing to remove accumulations of sediment from the adjacent street that escaped the construction site; PENALTY: $800; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(8) COMPANY: Pringka Corporation dba Speedys Food Store; DOCKET NUMBER: 2007-0986-PST-E; IDENTIFIER: RN104711734; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: $2,550; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Southwestern Public Service Company; DOCKET NUMBER: 2007-0769-IWD-E; IDENTIFIER: RN100224641; LOCATION: Amarillo, Potter County, Texas; TYPE OF FACILITY: steam electric generating; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001990000, Effluent Limitations and Monitoring Requirements Number 1 for Outfalls 001A, 005A, and 004A, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations; PENALTY: $4,320; Supplemental Environmental Project (SEP) offset amount of $1,728 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: Town & Country Food Stores, Inc. dba Town & Country 271; DOCKET NUMBER: 2007-0887-PST-E; IDENTIFIER: RN102007952; LOCATION: Big Lake, Reagan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current TCEQ delivery certificate is posted at the facility; 30 TAC §334.50(d)(9)(A)(iii) and the Code, §26.3475(c)(1), by failing to obtain statistical inventory reconciliation analysis from the designated provider; 30 TAC §334.50(d)(9)(A)(iv) and §334.72(3)(B), by failing to report a suspected release; and 30 TAC §334.74(1), by failing to investigate a suspected release; PENALTY: $8,550; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200703809
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 22, 2007

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Notice of Deletion of Harvey Industries, Inc. State Superfund Site from the State Superfund Registry

The executive director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this notice of deletion of the Harvey Industries, Inc. state Superfund site (the Site) from its proposed-for-listing status on the state Superfund registry. The state registry is the list of state Superfund sites that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The Site was originally proposed for listing on the state registry in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3506). The Site is located at the southeast corner of the intersection of Farm Road 2495 and Texas 31 in Athens, Henderson County, Texas. The Site included any areas where hazardous substances had come to be located as a result, either directly or indirectly, of releases of hazardous substances from the Site.

The Site was developed as a television cabinet and circuit board manufacturing facility in 1955. In 1973, a landfill was permitted for the facility in the location of a former clay mining pit. The landfill reportedly received sawdust, wood, cardboard, general refuse, paint sludge, and other industrial solid wastes. A hazardous waste incinerator and a fire training area were also located on the Site separate from the landfill. The waste incinerator and fire training areas, including associated groundwater impacts, were remediated by previous owners or operators of the Site prior to the Site being proposed to the state registry of Superfund sites. The hazard ranking system documentation prepared for the Site in 1994 identified potential hazards associated with the landfill and potential hazards associated with approximately 300 drums and containers of paint wastes and spent solvents located in various structures on the Site. The drums and containers of waste were removed by a third party under an agreement with the state which provided for cleanup of the on-site buildings and warehouses in exchange for the right to lease the warehouses.

From 1996 through 1998 the state conducted a remedial investigation of the Site, which determined that no hazardous substances exceeding protective concentrations were located within the landfill or soil at the Site. However, the investigation determined that arsenic, beryllium, lead, and nickel slightly exceeded protective concentrations in shallow groundwater at the Site. A 2001 draft proposal to address groundwater contamination by natural attenuation was withdrawn by the State when the protective concentration for arsenic was revised by a change in federal regulations.

Additional Site investigations conducted from 2002 through 2005 determined that landfill gas (methane) generated by the decomposition of solid waste in the landfill at the Site could have presented a future hazard to occupants of the nearby on-site buildings and could have affected the groundwater chemistry to allow the mobilization of contaminants in groundwater. Therefore, in 2006, a landfill gas venting system was installed to prevent buildup and further migration of landfill gas and to improve groundwater geochemistry.

Ongoing groundwater monitoring conducted since 2001 has demonstrated that no hazardous constituents associated with the Site remain in groundwater at levels that present a risk to human health or the environment. It is believed that natural attenuation and changes in geochemistry associated with the landfill gas venting system will prevent future occurrences of hazardous substances above protective concentrations in the groundwater associated with the Site. In one very isolated area outside the boundaries of the facility, shallow groundwater impacted by cadmium exceeds protective levels. However, this contamination is not attributable to the Site and therefore is not being addressed as part of the Site.

In accordance with 30 TAC §335.344(b), the commission held a public meeting to receive comments on the intended deletion of the Site on June 14, 2007, at the Cain Civic Center, 915 South Palestine, Athens, Texas. Most comments received into the record were addressed at the public meeting by TCEQ staff. TCEQ staff have prepared a letter that responds to one comment received into the record that was not fully addressed at the public meeting. This letter has been mailed to members

of the public who attended the meeting and a copy of the letter has been placed in the public file for the Site. The complete public file, including the transcript of the meeting, may be viewed during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, telephone numbers (800) 633-9363 or (512) 239-2920. Fees are charged for photocopying file information.

Pursuant to 30 TAC §335.344, the ED has determined that due to the removal actions that have been performed at the Site, the Site no longer presents an imminent and substantial endangerment to public health and safety or the environment.

A notice will be filed in the real property records of Henderson County, Texas stating that the Site has been deleted from the state registry. In accordance with commission rules, the Site is not appropriate for residential use.

In accordance with commission rules, notice will be recorded in the county deed records in Henderson County that an industrial solid waste landfill remains on the Site. The recorded notice will: 1) warn that no activity should be conducted which would harm the integrity of the landfill cover or the landfill gas collection system or the fence around the part of the landfill with earthen cover; 2) warn that no enclosed structure should be constructed over any part of the landfill; and 3) specify that vehicle parking and other similar activity may occur on the paved portion of the landfill as long as the paved cover is not damaged.

The TCEQ will conduct long-term operations and maintenance (O&M) activities at the Site to ensure continued function and integrity of the industrial solid waste landfill cover, the landfill gas venting system, a perimeter fence around the landfill, and groundwater monitoring wells. O&M activities will include groundwater monitoring to ensure that no future releases are associated with the solid waste in the landfill remaining on site.

All inquiries regarding the deletion of the Site should be directed to John Flores, Community Relations, telephone number 1-800-633-9363.

TRD-200703736
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 20, 2007

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Notice of District Petition

Notices issued August 15, 2007 through August 21, 2007.

TCEQ Internal Control No.07272007-D01; Charles Spellman, Jr., Managing Member of 93 Southview, LTD., a Texas Limited Partnership (Petitioner) filed a petition for creation of Watch Hill MUD (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of one tract, to be included in the proposed District; (2) there is one lien holder, Independent Bank of Austin, SSB, a Texas state savings bank, on the property to be included in the proposed District; (3) the proposed District will contain approximately 262 acres located in Williamson County, Texas; and (4) the proposed District is not within the extraterritorial jurisdiction of any city, town or village, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $15,500,000.

TCEQ Internal Control No. 07252007-D03; MA Sedona Lakes, LP, (Petitioner) filed a petition for creation of Sedona Lakes Municipal Utility District No. 1 of Brazoria County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land, consisting of three tracts, to be included in the proposed District; (2) there are two lien holders, E2M Value Added Fund, LP. and Capital One, National Association, on the property to be included in the proposed District; (3) the proposed District will contain approximately 500.22 acres located in Brazoria, Texas; and (4) the proposed District is wholly within the extraterritorial jurisdiction of the City of Manvel, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2007-R-11, effective June 11, 2007, the City of Manvel, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $52,600,000.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing;" (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200703812

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 22, 2007

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Notice of Public Meeting and a Proposed Reissuance of a General Permit Authorizing the Discharge of Storm Water Associated with Construction Activities

Under §26.040 of the Texas Water Code, the Texas Commission on Environmental Quality (TCEQ) proposes to renew a general permit (Texas Pollutant Discharge Elimination System Permit No. TXR150000) that authorizes discharges from construction sites into surface water in the state. The proposed general permit applies to the entire state of Texas.

PROPOSED GENERAL PERMIT. The Executive Director has prepared a draft renewal general permit that authorizes the discharge of storm water runoff associated with small and large construction sites and certain non-storm water discharges into surface water in the state. This general permit would specify which sites may be authorized under this general permit, which may obtain waivers, which may be eligible for coverage without submitting a notice of intent, and which must obtain individual permit coverage. This general permit would also authorize the discharge of storm water associated with industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site. The significant proposed changes to the general permit include: restructured permit fees that eliminate the annual fee; fee and provisional coverage timeline incentives for electronic submittal; and a change in the definition of construction site operator. Non-storm water discharges that are not specifically listed in the general permit are not authorized by the general permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the draft general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices, and are available at http://www.tceq.state.tx.us/goto/draftcgp.

PUBLIC COMMENTS/PUBLIC MEETING. You may submit public comments about this general permit in writing or orally at the public meeting held by the TCEQ. The purpose of a public meeting is to provide an opportunity to submit comments and to ask questions about the general permit. A public meeting is not a contested case hearing. The public comment period will end at the conclusion of the public meeting. The TCEQ will hold a public meeting on this general permit on Wednesday, October 3, 2007 at 1:00 p.m. at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 by the end of the public comment period on October 3, 2007.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting when the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commission's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about the permit or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained by calling the TCEQ's Water Quality Division, Storm Water and Pretreatment Team, at (512) 239-4671.

TRD-200703774
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 21, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of August 9, 2007 through August 16, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

CITY OF ARLINGTON P.O. Box 90231, Arlington, Texas 76004-3231; The University of Texas at Arlington, Box 19257, Arlington, Texas 76019-0257; and Texas Department of Transportation - Fort Worth District, P.O. Box 6868, Fort Worth, Texas 76115, which operate the City of Arlington Municipal Separate Storm Sewer System (MS4), have applied to the Texas Commission on Environmental Quality (TCEQ) for a minor amendment of existing TPDES Permit No. WQ00046350000, which authorizes storm water point source discharges to surface water in the state from the City of Arlington Municipal Separate Storm Sewer System (MS4). The MS4 is located within the corporate boundary of the City of Arlington, in Tarrant County, Texas. The discharge route is via the MS4 to various ditches and tributaries that eventually reach Lake Arlington, Joe Pool Lake,

and Lower West Fork Trinity River in Segment Nos. 0828, 0838, and 0841 of the Trinity River Basin.

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. 13870-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located 3,000 feet west by southwest from the intersection of Wilson Road and Atascocita Road; thence 2,500 feet south in the plant property between Garners Bayou and Atascocita Road; approximately 8,000 feet south of Lakeland School in Harris County, Texas.

CITY OF CANTON has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010399002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located approximately 4,000 feet northeast of the intersection of Interstate Highway 20 and State Highway 19 and approximately 5,000 feet northwest of the intersection of Interstate Highway 20 and Farm-to-Market Road 17 in Van Zandt County, Texas.

CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC an office complex and electric service center, has applied for a renewal of TPDES permit No. WQ0004483000, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via Outfall 001, and the discharge of cooling tower blowdown and low volume waste (floor drains) at a daily average flow not to exceed 10,000 gallons per day via Outfall 002. The facility is located at 16303 State Highway 249, immediately west of the T.H. Wharton Electric Generating Station approximately one mile southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960, Harris County, Texas.

COMAL INDEPENDENT SCHOOL DISTRICT has applied to the TCEQ for a major amendment to Permit No. 14295-001, to authorize an increase in the daily average flow from 13,000 gallons per day to 27,000 gallons per day via public access subsurface low pressure dosing drainfields and to increase the acreage irrigated from 3.65 acres to 6.2 acres. The wastewater treatment facility and disposal site are located approximately 3.9 miles east of the intersection of State Highway 46 and U.S. Highway 281 in Comal County, Texas. This permit will not authorize a discharge of pollutants into waters in the State.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 148 has applied for a major amendment to TPDES Permit No. 11818-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 350,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The facility is located at 11750 Greenspark Lane, approximately 1,600 feet south-southeast of the intersection of North Lake Houston Parkway and Kings Lake Forrest Drive in Harris County, Texas.

CITY OF HOUSTON has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010495050, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,760,000 gallons per day. The facility is located at 7410 Galveston Road (State Highway No. 3) in the City of Houston in Harris County, Texas.

CITY OF HOUSTON has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010495095, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,200,000 gallons per day. The facility is located south of the City of Alief on the south bank of Keegans Bayou; approximately 3,600 feet west of Keegan Road and 1,600 feet north of West Bellfort Avenue in Harris County, Texas.

NESTLE WATERS NORTH AMERICA INC. which operates the Wood County Bottling Plant, a manufacturing, storage and distribution bottling facility for spring water drinking products, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004812000, to authorize the discharge of process wash water, reverse osmosis reject water, cooling tower blowdown, boiler blowdown, and line and filler lubrication at a daily average flow not to exceed 150,000 gallons per day via Outfall 001. The facility is located east of County Road 3540, 2 miles northeast of Highway 14, Wood County, Texas.

RJR III REALTY LTD. has applied for a renewal of TPDES Permit No. 14302-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility will be located 1,500 feet north of the intersection of U.S. Highway 59 and Aldine Mail Road; approximately 200 feet west of U.S. Highway 59 in Harris County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014794001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. The facility will be located approximately 4,700 feet east-southeast of the intersection of Katy Hockley Cut-off and Beckendorff Road in Harris County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014767001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility will be located on the northbound side of Interstate Highway 37, approximately 5.9 miles north of the intersection of Interstate Highway 37 and U.S. Highway 281, near the City of Three Rivers in Live Oak County, Texas.

UPPER TRINITY REGIONAL WATER DISTRICT has applied for a renewal of TPDES Permit No. WQ0014323001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day in the final phase. The application also includes a request for a temporary variance to the existing water quality standards for Total Copper. The draft permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 4,250 feet northeast of the intersection of Mar-Top Road and Naylor Road (Farm-to-Market Road 424) and approximately 6,300 feet southeast of the intersection of U.S. Highway 380 and Naylor Road (Farm-to-Market Road 424), (a site 500 feet east of Naylor Road) in Denton County, Texas.

CITY OF WEST UNIVERSITY PLACE has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10058-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1000 feet west of Kirby Drive between Brays Bayou and North Brayswood Street in the City of Houston in Harris County, Texas.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor amendment of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 34 to correct an administrative error by having page 1 of TPDES Permit No. WQ0012298001 replaced with page 1 of TPDES Permit No. WQ0012298002. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility will be located

approximately 0.25 mile north of the intersection of Farm-to-Market Road 1093 and Katy-Gaston Road in Fort Bend County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703810
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 22, 2007

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Notice of Water Rights Applications

Notices issued August 14, 2007 through August 21, 2007.

APPLICATION NO. 12208; Trunkline Gas Company LLC, 5444 Westheimer Road, Houston, Texas 77056, Applicant, has applied for a temporary Water Use Permit to divert and use 36.94 acre-feet of water within a six month period from the Sabine River, Sabine River Basin for industrial purposes (hydrostatic testing) in Newton County. The application and partial fees were received on May 17, 2007. Additional information and fees were received on June 15, June 19, June 25, and July 23, 2007. The application was declared administratively complete and accepted for filing on July 27, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by September 10, 2007.

APPLICATION NO. 12215; Butler Family Partnership, Ltd., A Texas Limited Parternship, c/o John Lewis, 1717 West 6th Street, Suite 900, Austin, Texas 78703, and Cerco Development, Inc., c/o Vincent Musat, 221 West 6th Street, Suite 1300, Austin, Texas 78701, Applicants, have applied for a Water Use Permit to construct and maintain a dam and reservoir on an unnamed tributary of Gilleland Creek, Colorado River Basin for in-place recreational use and to use the bed and banks of the unnamed tributary of Gilleland Creek to convey groundwater downstream to the proposed dam and reservoir in Travis County. The application was received on May 31, 2007 and additional information was received on July 16, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 26, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice

APPLICATION NO. 12202; Saddle Creek Development Ltd, 751 Hwy 287 N Suite 104, Mansfield, TX 76063, Applicant, has applied for a Water Use Permit to maintain an existing dam and reservoir on Brown Branch, Trinity River Basin for in-place recreational use in Parker County. The reservoir will be kept at a constant level by use of an existing groundwater well. Fees and partial information were received on January 23, 2007. The application and additional information was received on March 28, 2007 and April 4, 2007. The application was accepted for filing and declared administratively complete on May 15, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 18-2003C; Wheatcraft, Inc., 6133 Highway 27, Center Point, Texas 78010, Applicant, has applied for an amendment to Certificate of Adjudication No. 18-2003 to divert and use an additional 100 acre-feet of contract water per year from the Guadalupe River, Guadalupe River Basin for agricultural (irrigation) and mining purposes in Kerr County based on an Upstream Diversion Contract with the Guadalupe-Blanco River Authority. The application and partial fees were received on February 20, 2007. Additional information and fees were received on April 30, 2007 and July 6, 2007. The application was accepted for filing and declared administratively complete on July 11, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703811
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 22, 2007

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for the nursing facility program operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are based on the rates in effect August 31, 2007, plus an average 3.0 percent increase, which reflects the availability of additional appropriated state and federal funds for nursing facility services. The proposed rates and public hearing notice were published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4262).

The adopted payment rates, which will be effective September 1, 2007, are as follows:

Rates by TILE (Texas Index for Level of Effort) class:

TILE	TILE Base Rate
201	$169.39
202	$151.15
203	$143.03
204	$119.63
205	$111.12
206	$112.36
207	$102.09
208	$98.64
209	$92.03
210	$80.22
211	$77.33
212 (default)	$77.33
Supplemental Payments:	
Ventilator - Continuous	$90.98
Ventilator - Less than Continuous	$36.39
Pediatric Tracheostomy	$54.59

Facilities participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the above payment rates based upon their level of enrollment in the Enhanced Direct Care Staff Rate. Enrollment levels are indicated by the number of Licensed Vocational Nurse (LVN) equivalent minutes a facility is required to provide to avoid recoupment of enhanced funds. LVN-equivalent minutes can be provided by Registered Nurses (RNs), LVNs, Medication Aides and/or Certified Nurse Aides.

Add-on Rates by Enhancement Level:

Minutes Associated with Adopted Rate	Adopted Rate Per Diem
1 LVN Minute = 2.13 Aide Minutes = 0.69 RN Minutes	$0.34
2 LVN Minutes = 4.25 Aide Minutes = 1.39 RN Minutes	$0.68
3 LVN Minutes = 6.38 Aide Minutes = 2.08 RN Minutes	$1.02
4 LVN Minutes = 8.50 Aide Minutes = 2.78 RN Minutes	$1.36
5 LVN Minutes = 10.63 Aide Minutes = 3.47 RN Minutes	$1.70
6 LVN Minutes = 12.75 Aide Minutes = 4.16 RN Minutes	$2.04
7 LVN Minutes = 14.88 Aide Minutes = 4.86 RN Minutes	$2.38
8 LVN Minutes = 17.00 Aide Minutes = 5.55 RN Minutes	$2.72
9 LVN Minutes = 19.13 Aide Minutes = 6.25 RN Minutes	$3.06
10 LVN Minutes = 21.25 Aide Minutes = 6.94 RN Minutes	$3.40
11 LVN Minutes = 23.38 Aide Minutes = 7.63 RN Minutes	$3.74
12 LVN Minutes = 25.50 Aide Minutes = 8.33 RN Minutes	$4.08
13 LVN Minutes = 27.63 Aide Minutes = 9.02 RN Minutes	$4.42
14 LVN Minutes = 29.75 Aide Minutes = 9.71 RN Minutes	$4.76
15 LVN Minutes = 31.88 Aide Minutes = 10.41 RN Minutes	$5.10
16 LVN Minutes = 34.00 Aide Minutes = 11.10 RN Minutes	$5.44
17 LVN Minutes = 36.13 Aide Minutes = 11.80 RN Minutes	$5.78
18 LVN Minutes = 38.25 Aide Minutes = 12.49 RN Minutes	$6.12
19 LVN Minutes = 40.38 Aide Minutes = 13.18 RN Minutes	$6.46
20 LVN Minutes = 42.50 Aide Minutes = 13.88 RN Minutes	$6.80
21 LVN Minutes = 44.63 Aide Minutes = 14.57 RN Minutes	$7.14
22 LVN Minutes = 46.75 Aide Minutes = 15.27 RN Minutes	$7.48
23 LVN Minutes = 48.88 Aide Minutes = 15.96 RN Minutes	$7.82
24 LVN Minutes = 51.00 Aide Minutes = 16.65 RN Minutes	$8.16
25 LVN Minutes = 53.13 Aide Minutes = 17.35 RN Minutes	$8.50
26 LVN Minutes = 55.25 Aide Minutes = 18.04 RN Minutes	$8.84
27 LVN Minutes = 57.38 Aide Minutes = 18.74 RN Minutes	$9.18

Facilities that verify liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition to the above payment rates based upon the type of liability insurance coverage they maintain:

Type of Liability Insurance	Adopted Rate Per Diem
General and Professional	$1.89
Professional Only	$1.73
General Only	$0.16

Methodology and Justification. The adopted rates were determined in accordance with the rate setting methodologies codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology; §355.308, Direct Care Staff Rate Component; and §355.312, Reimbursement Setting Methodology - Liability Insurance Costs. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2008-09 General Appropriations Act (Article IX, §19.82, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated $27.0 million in general revenue funds for State Fiscal Year 2008 for provider rate increases for the DADS Nursing Facility Program.

TRD-200703768
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 21, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 775, Transmittal Number TX 07-016, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The amendment eliminates the 2.5 percent Medicaid payment reduction for Medicaid services delivered by Case Management for Children and Pregnant Women (CPW) providers that was implemented effective September 1, 2003. The 2.5 percent Medicaid payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Legislature, Regular Session, 2003. A 2.5 payment reduction factor was applied to Medicaid rates for Medicaid professional and outpatient facility services at the end of the claims payment process, as the last step before calculating the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, §57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The amendment also revises the reimbursement methodology used to calculate fees for this service. The current reimbursement methodology is based on cost and time study data. The revised methodology uses an analysis of relevant cost or fee surveys available to HHSC to determine the fees.

The proposed amendment is estimated to result in additional annual aggregate spending of $97,039 for the remainder of federal fiscal year (FFY) 2007, with approximately $58,980 in federal expenditures and approximately $38,059 in state general revenue expenditures. For FFY 2008, the estimated additional annual aggregate spending is $1,165,748, with approximately $705,977 in federal expenditures and approximately $459,771 in state general revenue expenditures. For FFY 2009, the estimated additional annual aggregate spending is $1,257,852, with approximately $759,994 in federal expenditures and approximately $497,858 in state general revenue expenditures.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Guilda Roman, Rate Analyst, by mail at Rate Analysis, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1890; by facsimile at (512) 491-1998; or by e-mail at guilda.roman@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703660
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 16, 2007

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Amendment 797, Transmittal Number TX 07-038, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The amendment eliminates the 2.5 percent payment reduction for Medicaid services delivered by certified registered nurse anesthetists that was implemented effective September 1, 2003. The 2.5 percent payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. A 2.5 percent payment reduction factor was applied to Medicaid rates for Medicaid professional services at the end of the claims payment process, as the last step before calculating the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Special Provisions, Section 57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The proposed amendment is estimated to result in additional annual aggregate expenditures for federal fiscal year (FFY) 2007 of $24,905, of which $15,137 are federal funds and $9,768 are state general revenue. For FFY 2008, the estimated additional aggregate expenditures is $316,792, of which $191,849 are federal funds and $124,943 are state general revenue. For FFY 2009, the estimated additional aggregate expenditures is $340,868, with $205,952 in federal funds, and $134,915 in state general revenue.

The amendment also eliminates high-volume provider payments for certified registered nurse anesthetists (CRNAs) effective September 1, 2007. High-volume payments for CRNAs were implemented effective January 18, 2002, as a result of increased appropriations from the 2002-03 General Appropriations Act (Article II, Special Provisions, Section 29, S.B. 1, 77th Legislature, Regular Session, 2001). The 80th Legislature did not continue the high-volume provider payment rider; rather, those general revenue funds were redistributed for other provider rate increases. There is no fiscal impact associated with ending these high-volume provider payments, which will be used to increase rates for services.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Eileen Kreh, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1347; by facsimile at (512) 491-1998; or by e-mail at Eileen.Kreh@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703734
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 20, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Amendment 798, Transmittal Number TX 07-039, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The proposed amendment eliminates the 2.5 percent payment reduction for Medicaid services delivered by home health agencies providing home health services that was implemented effective September 1, 2003. The 2.5 percent payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, Section 28, H.B. 1, 78th Legislature, Regular Session, 2003) and Section 2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. A 2.5 percent payment reduction factor was applied to Medicaid rates for Medicaid services at the end of the claims payment process, as the last step before calculating the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $95,450 for the remainder of federal fiscal year (FFY) 2007, with approximately $58,015 in federal funds and approximately $37,436 in state general revenue. For FFY 2008, the estimated additional aggregate expenditure will be $1,214,125, with approximately $735,274 in federal funds and approximately $478,851 in state general revenue. For FFY 2009, the estimated additional aggregate expenditure will be $1,306,399, with approximately $789,326 in federal funds and approximately $517,073 in state general revenue.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting Nancy Kimble, Senior Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1363; by facsimile at (512) 491-1998; or by e-mail at nancy.kimble@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703735
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: August 20, 2007

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Public Notice

The Texas Health and Human Services Commission (HHSC) withdraws the previously published public notice announcing its intent to submit Amendment 796, Transmittal Number TX 07-037 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The public notice was published in the August 24, 2007, issue of the *Texas Register*. The public notice is withdrawn in order to correct the estimated fiscal impact of the proposed changes.

HHSC hereby announces its intent to submit Amendment 796, Transmittal Number TX 07-037, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The amendment eliminates the 2.5 percent payment reduction for Medicaid services for family planning services that was implemented effective September 1, 2003. The 2.5 percent payment reduction was implemented as a result of the 2004-05 General Appropriations Act (Article II, Special Provisions, §28, H.B. 1, 78th Legislature, Regular Session, 2003) and §2.03 of H.B. 2292, 78th Texas Legislature, Regular Session, 2003. A 2.5 percent payment reduction factor was applied to Medicaid rates for Medicaid professional services at the end of the claims payment process, as the last step before calculating the actual payment. The elimination of the 2.5 percent payment reduction is a result of increased appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, §57(a)(3)(i), H.B. 1, 80th Texas Legislature, Regular Session, 2007).

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $148,752 for the remainder of federal fiscal year (FFY) 2007, with approximately $133,877 in federal funds and approximately $14,875 in state general revenue. For FFY 2008, the estimated additional aggregate expenditure is $1,892,134, with approximately $1,702,921 in federal funds and approximately $189,213 in state general revenue. For FFY 2009, the estimated additional aggregate expenditure is $2,035,937, with approximately $1,832,343 in federal funds and approximately $203,594 in state general revenue.

Interested parties may obtain copies of the proposed amendment or submit written comments by contacting James Hollinger, Rate Analyst, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1175; by facsimile at (512) 491-1998; or by e-mail at james.hollinger@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200703807
Steve Aragón
Chief Counsel
Texas Health and Human Services
Filed: August 22, 2007

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Bishop	Oxea Corporation	L06079	Bishop	00	07/16/07
Houston	West Side Cardiovascular Associates DBA Lalitha Sunder MD PA	L06084	Houston	00	07/18/07
Houston	National Oilwell Varco LP	L06094	Houston	00	07/23/07
Houston	Texas Port Recycling LP	L06101	Houston	00	0723/07
Irving	Las Colinas Oncology MSO LP DBA Las Colinas Cancer Center	L06078	Irving	00	07/23/07
Midland	Midland Certified Reagent Company Inc	L06082	Midland	00	07/03/07
Pasadena	University Cancer Center Huntsville Brenham Inc	L06070	Psasdena	00	07/30/07
Round Rock	Scott and White Community Hospital Corp DBA Scott and White Hospital at University Medical Campus	L06085	Round Rock	00	07/13/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alice	Christus Spohn Health System Corporation DBA Christus Spohn Hospital Alice	L02390	Alice	41	07/10/07
Allen	Presbyterian Medical Center DBA Presbyterian Hospital of Allen	L05765	Allen	06	07/23/07
Amarillo	Cardiology Center of Amarillo LLP	L05736	Amarillo	07	07/12/07
Angleton	Dr. Salim F Dabaghi	L05353	Angleton	05	07/16/07
Aransas Pass	North Bay General Hospital DBA North Bay Hospital	L03446	Aransas Pass	34	07/27/07
Arlington	Arlington Memorial Hospital	L02217	Arlington	87	07/23/07
Arlington	Imaging and Medical Diagnostic Specialists PA DBA Central Imaging of Arlington	L04876	Arlington	10	07/25/07
Arlington	Open Imaging Arlington LLC DBA Arlington Medical Imaging	L05575	Arlington	06	07/27/07
Austin	Austin Heart PA	L04623	Austin	44	07/16/07
Austin	Austin Heart PA	L04623	Austin	45	07/16/07
Austin	Austin Heart PA	L05580	Austin	17	07/24/07
Austin	Austin Nuclear Pharmacy Inc	L05591	Austin	06	07/18/07
Austin	Cedra Corporation	L04427	Austin	16	07/16/07
Austin	Daughters of Charity Health Services of Austin DBA Dell Childrens Medical Center of Central Texas	L06065	Austin	01	07/13/07
Austin	Texas Oncology PA	L05108	Austin	16	07/30/07
Austin	The University of Texas at Austin	L00485	Austin	75	07/10/07
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	51	07/25/07
Beaumont	Baptist Hospital of Southwest Texas	L00358	Beaumont	107	07/13/07
Bedford	Metroplex Surgicare Partners LTD DBA Metroplex Surgicare	L05764	Bedford	03	07/17/07
Bedford	Texas Oncology PA DBA Edwards Cancer Center	L05550	Bedford	14	07/18/07
Bryan	Central Texas Heart Center PA	L05960	Bryan	02	07/19/07
Carrollton	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrolton	13	07/19/07
Cleveland	Nadim M Zacca MD PA	L05570	Cleveland	03	07/19/07
College Station	Texas A&M University	L05683	College Station	07	07/18/07
Conroe	CHCA Conroe LP	L01769	Conroe	72	07/25/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Corinth	Network Cancer Care of Denton DBA Cancer Care Resource	L05348	Corinth	20	07/16/07
Corpus Christi	Mcturbine Inc	L04341	Corpus Christi	06	07/26/07
Corpus Christi	Radiology & Imaging of South Texas LLP	L05182	Corpus Christi	19	07/19/07
Crockett	East Texas Medical Center Crockett	L01411	Crockett	30	07/12/07
Dallas	Baylor University Medical Center	L01290	Dallas	84	07/18/07
Dallas	Cardinal Health	L02048	Dallas	123	07/20/07
Dallas	Cardiology & Interventional Vascular Associates	L05412	Dallas	07	07/19/07
Dallas	Cumbre Inc	L05474	Dallas	05	07/16/07
Dallas	Dallas Cardiology Associates PA DBA Heartplace East	L04607	Dallas	51	07/10/07
Dallas	E^+ PET Imaging V LP DBA PET Imaging of Dallas	L05726	Dallas	07	07/13/07
Dallas	Gerald F Bulloch MD PA	L05809	Dallas	03	07/19/07
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	53	07/13/07
Dallas	PETNET Solutions Inc	L05193	Dallas	29	07/17/07
Dallas	PETNET Solutions Inc	L05193	Dallas	28	07/12/07
Dallas	PETNET Solutions Inc	L05193	Dallas	30	07/25/07
Dallas	Renaissance Hospital Dallas Inc	L05900	Dallas	04	07/23/07
Dallas	Texas Oncology PA	L04878	Dallas	37	07/29/07
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	10	07/25/07
Deer Park	GK Techstar LLC DBA Techstar	L05562	Deer Park	08	07/12/07
Edna	Jackson County Hospital District DBA Jackson Healthcare Center	L04842	Edna	11	07/16/07
El Paso	Ediberto Soto-Cora MD PA	L05535	El Paso	04	07/17/07
El Paso	El Paso Healthcare System LTD DBA Del Sol Medical Center	L02551	El Paso	50	07/11/07
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	73	07/30/07
El Paso	Maple Chase Company DBA Invensys Controls	L03815	El Paso	15	07/18/07
El Paso	TENET Hospitals Limited DBA Sierra Medical Center	L02365	El Paso	61	07/18/07
Ennis	PRHC Ennis LP DBA Ennis Regional Medical Center	L05427	Ennis	07	07/17/07
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	63	07/23/07
Friendswood	ISO Tex Diagnostics Inc	L02999	Friendswood	45	07/10/07
Grapevine	Grapevine Imaging & Pain Management LLC	L05922	Grapevine	07	07/26/07
Harlingen	Cardiac Imaging Associates LLP	L05845	Harlingen	05	07/12/07
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	65	07/26/07
Houston	American Diagnostic Tech LLC	L05514	Houston	40	07/17/07
Houston	American Diagnostic Tech LLC	L05514	Houston	39	07/16/07
Houston	Bernardo Treistman MD PA DBA Cardiology Specialists of Houston	L05083	Houston	07	07/18/07
Houston	Cambridge Heart Center PA	L05623	Houston	06	07/11/07
Houston	CHCA West Houston LP	L05808	Houston	09	07/19/07
Houston	Cardiology Associates of Houston PA	L05608	Houston	04	07/24/07
Houston	Cardiology of Houston	L05285	Houston	06	07/25/07
Houston	Framo Engineering Houston Inc	L05867	Houston	01	07/18/07
Houston	Gulf Coast Cancer Center	L05185	Houston	11	07/16/07
Houston	Houston Cardiovascular Consultants LLP DBA Houston Cardiovascular Imaging	L05350	Houston	10	07/27/07
Houston	Houston Northwest Medical Center	L02253	Houston	70	07/23/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Kelsey Seybold Clinic PA	L00391	Houston	62	07/25/07
Houston	Kota J Reddy MD PA	L05568	Houston	04	07/19/07
Houston	Memorial Cardiology Associates PA	L05349	Houston	08	07/16/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	127	07/12/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	93	07/20/07
Houston	Methodist Health Centers DBA Methodist Willowbrook Hospital	L05472	Houston	25	07/11/07
Houston	Northwest Cardiology Consultants PA	L05795	Houston	08	07/18/07
Houston	Radiomedix Inc DBA Radiomedix	L06044	Houston	01	07/23/07
Houston	SKG Heart Center PLLC	L05906	Houston	02	07/18/07
Houston	The Methodist Hospital	L00457	Houston	152	07/16/07
Houston	The Methodist Hospital	L00457	Houston	151	07/11/07
Houston	TOPS Specialty Hospital LTD DBA TOPS Surgical Specialty Hospital	L05441	Houston	11	07/20/07
Houston	University General Hospital LP	L06018	Houston	01	07/16/07
Katy	Deteq Services	L05778	Katy	06	07/18/07
Katy	St Catherine Health and Wellness Center	L05310	Katy	14	07/16/07
Kingsville	Texas A&M University Kingsville	L01821	Kingsville	33	07/12/07
La Grange	Austin Heart La Grange	L05516	La Grange	20	07/24/07
La Porte	Cardiorad Inc	L05755	La Porte	13	07/18/07
Lake Jackson	Brazosport Cardiology DBA Pearland Heart Institute	L05359	Lake Jackson	06	07/24/07
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	25	07/27/07
Lubbock	Covenant Medical Center	L00483	Lubbock	136	07/23/07
Lubbock	Lubbock Heart Hospital LP	L05742	Lubbock	05	07/19/07
Lubbock	Texas Tech University	L01536	Lubbock	80	07/11/07
Lubbock	Texas Tech University	L01536	Lubbock	81	07/24/07
Lufkin	The Heart Institute of East Texas	L04147	Lufkin	17	07/20/07
Marble Falls	Austin Heart PA DBA Austin Heart Clinic Marble Falls	L05505	Marble Falls	18	07/24/07
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	83	07/23/07
McAllen	McAllen Hospitals LP DBA McAllen Medical Heart Hospital	L04902	McAllen	17	07/23/07
McAllen	Valley Cardiology PA	L04692	McAllen	19	07/10/07
Midland	DGM Services Inc DBA Longhorn Inspection	L05895	Midland	01	07/19/07
Midland	Midland County Hospita; Didtrict DBA Midland Memorial Hospital	L00728	Midland	81	07/11/07
Nederland	Murlidhar A Amin MD PA	L05735	Nederland	03	07/26/07
New Braunfels	New Braunfels Cardiology	L05463	New Braunfels	08	07/17/07
North Richland Hills	Dallas Cardiology Associates DBA Heartplace North Richland Hills	L05548	North Richland Hills	11	07/10/07
Odessa	Odessa Regional Hospital LP DBA Odessa Regional Hospital	L04885	Odessa	10	07/25/07
Olney	Olney Hamilton Hospital District DBA Hamilton Hospital	L03226	Olney	17	07/26/07
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	42	07/25/07
Plano	Columbia Medical Center of Plano Subsidiary LP DBA Medical Center of Plano	L02032	Plano	84	07/23/07
Plano	Physician Reliance Network Inc	L05896	Plano	10	07/24/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Point Comfort	Alcoa World Alumina Atlantic	L05186	Point Comfort	07	07/23/07
Richmond	Oakbend Medical Center	L02406	Richmond	47	07/16/07
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	20	07/24/07
San Angelo	Shannon Clinic	L04216	San Angelo	39	07/27/07
San Antonio	ACA SA Ltd DBA Sendero Imaging and Treatment Center	L05567	San Antonio	13	07/19/07
San Antonio	Cardiovascular Associates of San Antonio PA	L04996	San Antonio	12	07/16/07
San Antonio	Christus Santa Rosa Surgery Center LLP DBA Christus Santa Rosa Surgery Center	L05805	San Antonio	05	07/18/07
San Antonio	City Public Service	L02876	San Antonio	21	07/16/07
San Antonio	Heart and Vascular Institute of Texas	L04799	San Antonio	19	07/19/07
San Antonio	Heart Hospital of San Antonio LP DBA Texsan Heart Hospital	L05722	San Antonio	09	07/23/07
San Antonio	Jeremy Nyle Wiersig MD PA DBA Concord Imaging	L05915	San Antonio	04	07/23/07
San Antonio	Methodist Healthcare System of San Antonio LTD DBA The Gamma Knife Center	L05076	San Antonio	21	07/25/07
San Antonio	O'Neill and Associates PA	L03710	San Antonio	15	07/24/07
San Antonio	PETNET Solutions Inc	L05569	San Antonio	17	07/23/07
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04305	San Antonio	38	07/12/07
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	05	07/18/07
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	157	07/11/07
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	58	07/11/07
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	110	07/16/07
San Antonio	UT Medicine San Antonio	L05410	San Antonio	09	07/25/07
San Antonio	Veterinary Imaging Center of South Texas PA	L05559	San Antonio	06	07/17/07
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	59	07/23/07
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	166	07/23/07
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	23	07/24/07
Sugarland	Chris Xiaoguang Chen MD PA	L06054	Sugarland	01	07/19/07
Sugarland	Sugarland Cardiology Associates LLP	L05789	Sugarland	03	07/18/07
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	24	07/16/07
Temple	Specialty Pharmacy Services Inc	L04883	Temple	26	07/13/07
Temple	Wilsonart International	L02857	Temple	22	07/17/07
Texarkana	New Hope Enterprises Ltd DBA New Hope Cancer Institute	L05560	Texarkana	06	07/17/07
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	48	07/19/07
The Woodlands	Lexicon Pharmaceuticals Inc	L04932	The Woodlands	17	07/17/07
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	68	07/19/07
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	165	07/17/07
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	166	07/30/07
Throughout Tx	Global X-Ray & Testing Corp	L03663	Aransas Pass	102	07/24/07
Throughout Tx	MPM Products Inc	L00967	Arlington	39	07/17/07
Throughout Tx	Texas Department of Transportation	L00197	Austin	131	07/26/07
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	59	07/17/07
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	57	07/18/07
Throughout Tx	Xxtreme Pipe Services LLC	L02576	Channelview	25	07/27/07
Throughout Tx	DMG Equipment Co Ltd DBA Pavers Supply Company	L04856	Conroe	09	07/24/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Rock Engineering and Testing Laboratory Inc	L05168	Corpus Christi	07	07/20/07
Throughout Tx	Reed Engineering Group Inc	L04343	Dallas	15	07/17/07
Throughout Tx	IRISNDT Inc	L04769	Deer Park	41	07/24/07
Throughout Tx	JAGOE - Public Company	L05042	Denton	03	07/18/07
Throughout Tx	Bureau Veritas North America Inc	L03157	Fort Worth	51	07/25/07
Throughout Tx	Freese and Nichols Inc	L04301	Fort Worth	14	07/20/07
Throughout Tx	Lockheed Martin Corporation	L05633	Fort Worth	08	07/23/07
Throughout Tx	Alliance Laboratories Inc	L05586	Houston	04	07/18/07
Throughout Tx	American Diagnostic Medicine Inc	L06068	Houston	01	07/27/07
Throughout Tx	Nuclear Sources & Services Inc DBA NSSI/Sources & Services Inc	L02991	Houston	35	07/18/07
Throughout Tx	Q Pro Inc DBA Q Pro Technical Services	L05980	Houston	03	07/16/07
Throughout Tx	RTD Pipeline Services USA LP	L05985	Houston	04	07/23/07
Throughout Tx	Weldsonix Inc	L05718	Houston	32	07/16/07
Throughout Tx	Hi-Tech Testing Service Inc	L05021	Longview	65	07/20/07
Throughout Tx	L & G Engineering Laboratory LLC	L05647	Mercedes	05	07/27/07
Throughout Tx	Endeavor Energy Resources LP	L05085	Midland	06	07/26/07
Throughout Tx	New Tech Systems Inc	L05098	Midland	06	07/19/07
Throughout Tx	Eagle X-Ray	L03246	Mont Belvieu	93	07/23/07
Throughout Tx	Anatec Texas Inc	L04865	Nederland	73	07/17/07
Throughout Tx	Dean Word Company Ltd	L04588	New Braunfels	08	07/18/07
Throughout Tx	T C Inspections Inc	L05833	Oyster Creek	24	07/19/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	127	07/17/07
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	76	07/30/07
Throughout Tx	Midwest Inspection Services	L03120	Perryton	100	07/26/07
Throughout Tx	ALCOA Inc	L04316	Rockdale	21	07/19/07
Throughout Tx	PHC Wireline Ins DBA PSI Wireline	L05911	San Angelo	02	07/19/07
Throughout Tx	Russell T Gully	L05918	San Angelo	02	07/17/07
Throughout Tx	Carrillo & Associates Inc	L05804	San Antonio	07	07/11/07
Throughout Tx	San Antonio River Authority	L02706	San Antonio	13	07/20/07
Throughout Tx	Thermo Measuretech	L03524	Sugarland	73	07/23/07
Throughout Tx	Lamco & Associate	L05152	The Woodlands	07	07/18/07
Throughout TX	Accurate Logging & Perforating Inc	L04221	Tyler	11	07/20/07
Throughout Tx	ETTL Engineers & Consultants Inc	L01423	Tyler	35	07/17/07
Throughout Tx	City Of Wichita Falls	L03217	Wichita Falls	16	07/19/07
Tomball	Chase Environmental Group Inc	L05787	Tomball	03	07/27/07
Tyler	Trinity Mother Frances Health System	L01670	Tyler	129	07/19/07
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	39	07/26/07
Victoria	Equistar Chemicals LP	L04101	Victoria	19	07/16/07
Waco	Baylor University	L00343	Waco	23	07/23/07
Waco	City of Waco	L05160	Waco	03	07/16/07
Waco	Providence Health Center	L01638	Waco	54	07/19/07
Webster	Cardiovascular Clinic	L05949	Webster	02	07/11/07
Webster	Cardiovascular Associates of Clear Lake PA	L05549	Webster	10	07/13/07
Webster	CHCA Clear Lake LP DBA Clear Lake Regional Medical Center	L01680	Webster	74	07/12/07
Webster	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05475	Webster	09	07/24/07
Weslaco	R G V Heart Specialist LLP	L05554	Weslaco	02	07/18/07
Wharton	Signature Gulf Coast Hospital LP DBA Gulf Coast Medical Center	L01388	Wharton	43	07/17/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Whitesboro	Hartman and Easter PC DBA Performance Equine Associates	L05546	Whitesboro	04	07/17/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Beaumont	Gerdau Ameristeel US Inc DBA Gerdau Ameristeel Beaumont	L02122	Beaumont	27	07/18/07
College Station	Texas A&M University	L00448	College Station	127	07/24/07
Denton	George S Rebecca MD FACC DBA Texas Cardiovascular Medicine	L05099	Denton	08	07/26/07
Texas City	Stork Southwestern Laboratories Inc	L05269	Texas City	13	07/23/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Doctors Hospital LP	L02047	Houston	29	07/23/07
Tyler	Cardinal Health	L02987	Tyler	50	07/17/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200703766
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 21, 2007

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Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Denton	Denton Cancer Center LLC	L06093	Denton	00	08/14/07
Fairfield	TXU Mining Company	L06098	Fairfield	00	08/01/07
Port Neches	Texas Petrochemical LP	L06106	Port Neches	00	08/02/07
Throughout Tx	Wind Consultants LLC DBA Renewable Resource Consultants LLC	L06105	Round Rock	00	08/02/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Allen	Presbyterian Hospital of Allen	L05765	Allen	07	08/08/07
Amarillo	The Don and Sybil Harrington Cancer Center	L03053	Amarillo	41	08/07/07
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Center	L04910	Austin	72	08/13/07
Baytown	San Jacinto Methodist Hosptial	L02388	Baytown	52	08/06/07
Beaumont	Advanced Cardiovascular Specialist LLP	L05512	Beaumont	11	07/27/07
Beaumont	Advanced Cardiovascular Specialist LLP	L05512	Beaumont	12	08/03/07
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	108	08/08/07
Brownwood	Brownwood Hospital LP DBA Brownwood Regional Medical Center	L02322	Brownwood	57	08/03/07
Cedar Creek	Biocrest Manufacturing LP	L05214	Cedar Creek	05	08/01/07
Cleveland	Cleveland Regional Medical Center LP	L02055	Cleveland	37	08/01/07
Conroe	CHCA Conroe LP DBA Conroe Regional Medical Center	L01769	Conroe	73	08/13/07
Cypress	North Cypress Medical Ctr Operating LLC DBA North Cypress Medical Center	L06020	Cypress	05	08/14/07
Dallas	Cardiac Associates of Dallas	L05793	Dallas	05	08/02/07
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	173	08/10/07
Dallas	Southern Methodist University	L00443	Dallas	24	08/01/07
Denison	Texoma Medical Center	L01624	Denison	59	08/03/07
Denton	Denton Cancer Center LLP	L05945	Denton	03	08/13/07
Fort Worth	David F Corral MD PA	L05650	Fort Worth	05	08/08/07
Fort Worth	Maxum Health Services Corporation DBA Insight Diagnostic Center-Eighth Ave.	L05887	Fort Worth	102	07/30/07
Fort Worth	Physician Reliance LP DBA Texas Oncology at Klabzuba	L05545	Fort Worth	22	08/13/07
Fort Worth	Tarrant Count Cardiology	L04659	Fort Worth	16	07/31/07
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	15	08/02/07
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	74	07/31/07
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	75	08/10/07
El Paso	El Paso Heart Center	L04828	El Paso	17	08/13/07
Euless	Cor Specialty Associates of North Texas	L05062	Euless	21	08/06/07
Garland	Baylor Medical Center at Garland	L01565	Garland	46	08/10/07
Georgetown	St Davids Georgetown Hospital	L03152	Georgetown	37	08/03/07
Gonzales	Gonzales Healthcare System DBA Memorial Hospital	L03473	Gonzales	12	08/03/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Granbury	Granbury Hospital Corporation DBA Lake Granbury Medical	L02903	Granbury	30	07/31/07
Henderson	Henderson Memorial Hospital	L03466	Henderson	21	08/10/07
Houston	American Diagnostic Medicine Inc	L06068	Houston	02	08/08/07
Houston	Atomic Energy Industrial Laboratories of The Southwest	L01067	Houston	28	08/05/07
Houston	Baylor College of Medicine	L00680	Houston	93	08/07/07
Houston	Diagnostic Cardiology of Houston	L04888	Houston	11	08/08/07
Houston	E+PET Imaging VII, LP DBA PET Imaging of Houston - West	L05806	Houston	04	08/01/07
Houston	Exxonmobil Upstream Research Company	L002205	Houston	56	07/31/07
Houston	Houston Medical Imaging	L05184	Houston	10	08/06/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	94	08/06/07
Houston	Positron Corporation	L03806	Houston	29	08/01/07
Houston	River Oaks Imaging & Diagnostic LP DBA River Oaks Imaging & Diagnostic	L05493	Houston	10	08/03/07
Houston	Valco Instruments Company Inc	L01572	Houston	25	07/31/07
Irving	Cor Specialty Associates of North Texas PA	L05373	Irving	12	08/02/07
La Porte	Clean Harbors Deer Park LP	L02870	La Porte	25	07/30/07
Laredo	Cancer Physicians Associated PA	L05790	Laredo	05	08/02/07
Laredo	Laredo Cardiovascular Consultants DBA Laredo Cardiovascular Consultants PA	L04687	Laredo	14	07/31/07
Livingston	Memorial Hospital of Polk County DBA Memorial Medical Center Livingston	L05552	Livingston	08	08/06/07
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	06	08/08/07
Longview	Longview Regional Hospital Inc DBA Longview Regional Medical Center	L02882	Longview	37	08/07/07
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research & Treatment Center	L04881	Lubbock	43	07/30/07
Lubbock	Covenant Medical Group DBA Cardiology Associates Covenant Medical Group	L04468	Lubbock	19	07/30/07
Lubbock	ISORX Texas LTD	L05284	Lubbock	21	07/31/07
McAllen	Cardiovascular Consultants of McAllen PA	L05126	McAllen	18	08/03/07
Mesquite	Southwest Cardiac Associates	L05589	Mesquite	05	08/07/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	82	08/02/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	83	08/08/07
Midland	West Texas Nuclear Pharmacy Partners	L04573	Midland	17	08/03/07
Mount Pleasant	TXU Power	L04565	Mount Pleasant	12	07/31/07
Odessa	Flint Hills Resources LP	L00547	Odessa	43	08/02/07
Odessa	University of Texas of the Permian Basin	L02695	Odessa	14	07/31/07
Pasadena	Marathon Pipe Line LLC	L05303	Pasadena	08	08/02/07
Plano	Texas Heart Hospital of the Southwest LLP DBA The Heart Hospital Baylor Plano	L06004	Plano	06	08/08/07
Plano	Women's Diagnostic of Texas	L05601	Plano	07	08/01/07
Robstown	US Ecology Texas Inc	L05518	Robstown	05	08/03/07
Round Rock	Columbia/St Davids Healthcare System LP DBA Medical Center of Round Rock	L03469	Round Rock	42	08/07/07
San Angelo	San Angelo Hospital LP DBA San Angelo Community Medical Center	L02487	San Angelo	41	08/08/07
San Angelo	Shannon Clinic	L04216	San Angelo	40	08/03/07

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	Southwest General Hospital LLP DBA Southwest General Hospital	L02689	San Antonio	35	08/02/07
San Antonio	Texas Cancer Clinic	L05786	San Antonio	07	08/13/07
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	60	08/06/07
San Antonio	VHS San Antonio Partners LLC DBA Baptist Health System	L00455	San Antonio	167	08/13/07
Sherman	Scela Inc	L05461	Sherman	13	07/30/07
Snyder	Weaver Services Inc DBA WSI Cased Hole Specialist	L01489	Snyder	30	08/05/07
Stafford	Sugar Land Veterinary Specialist PC	L05903	Stafford	03	07/30/07
The Woodlands	The Woodlands Sports Medicine Centre PA	L04390	The Woodland	14	08/01/07
Throughout Tx	Desert Industrial X-Ray LP	L04590	Abilene	69	08/02/07
Throughout Tx	Team Industrial Services Inc	L00087	Alvin	167	07/31/07
Throughout Tx	Lotus LLC	L05147	Andrews	13	08/01/07
Throughout Tx	Texas Department of Transportation	L00197	Austin	132	08/02/07
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	60	07/31/07
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	58	08/05/07
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	59	08/06/07
Throughout Tx	Irisndt Inc	L04769	Deer Park	42	08/09/07
Throughout Tx	Pavetex Engineering and Testing Inc	L05533	Dripping Springs	05	08/03/07
Throughout Tx	Integrity Testing & Inspection Inc	L06027	El Paso	03	08/01/07
Throughout Tx	NDE Inc	L02355	Fort Worth	24	07/30/07
Throughout Tx	Austin Reed Engineers LLC	L05578	Houston	06	07/31/07
Throughout Tx	Halliburton Energy Services Inc	L00442	Houston	112	07/31/07
Throughout Tx	Lone Star Testing Laboratories	L04013	Houston	14	08/01/07
Throughout Tx	Metco	L03018	Houston	173	08/08/07
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	03	08/02/07
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	235	07/30/07
Throughout Tx	American X-Ray & Inspection Services Inc DBA AXIS Inc	L05974	Midland	04	08/06/07
Throughout Tx	Big State X-Ray	L02693	Odessa	63	08/02/07
Throughout Tx	Conam Inspection & Engineering Inc	L05010	Pasadena	128	08/06/07
Throughout Tx	Fugro Consultants LP	L04322	Pasadena	88	08/07/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	28	08/02/07
Throughout Tx	Thermo Measuretech	L03524	Sugar Land	74	08/01/07
Throughout Tx	Knife River Corporation - South DBA Young Contractors Inc	L04095	Waco	20	08/03/07
Tomball	Tomball Hospital Authority DBA Tomball Regional Hospital	L02514	Tomball	45	08/07/07
Tyler	East Texas Medical Center	L00977	Tyler	138	07/31/07
Victoria	Detar Hospital North	L03575	Victoria	21	08/01/07
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	21	08/05/07
Weatherford	Medical and Heart Center PA	L05573	Weatherford	03	08/03/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Dallas	Cardinal Health	L02048	Dallas	124	08/03/07
Freeport	Brazos Pipe & Steel Fabricators	L02186	Freeport	27	07/31/07
Orange	Solvay Solexis Inc	L03968	Orange	19	08/01/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
North Richland Hills	Cor Specialty Associates of North Texas PA	L05399	North Richland Hills	08	08/06/07
The Woodlands	The Woodlands Sports Medicine Centre PA	L04390	The Woodlands	15	08/08/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200703767
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 21, 2007

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Notice of Public Hearings Schedule for Development and Review of Block Grant Funds

Under the authority of the Preventive Health Amendments of 1992 (see 42 United States Code §§300w et. seq), the Texas Department of State Health Services (DSHS) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services Block Grant (PHHSBG) during federal fiscal year (FFY) 2008. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a work plan) of the intended use of block grant funds in advance of each FFY and to furnish a description of revisions made during the fiscal year. Each state is required to hold hearings and to make proposals of these descriptions public within each state in such a manner as to facilitate comments.

In FFY 2008, six activities are proposed to be funded under the block grant. These include sexual assault prevention and crisis services, border health and colonias, behavioral risk factor surveillance system, trauma registry, local health departments, and Health Service Regions.

The PHHS Block Grant award for FFY 2007 was $4,043,849. Of this amount, $510,620 was required to be used for sexual assault prevention and crisis services.

DSHS has prepared the following schedule for the development and review of the FFY 2008 Work Plan for the PHHSBG. In September of 2007, DSHS will hold public hearings in four Health Service Regions (HSRs):

September 18, 2007

Health Service Region 7, 1100 West 49th Street, Room G102, Austin, Texas 4:00 - 6:00 p.m.

September 18, 2007

Health Service Region 6/5 South, 5425 Polk, Conference Room 4BC, Houston, Texas 9:30 a.m.

September 19, 2007

Health Service Region 11, 601 West Sesame Drive, Rockport Room, Harlingen, Texas 10:00 a.m.

September 19, 2007

Health Service Region 1, 1109 Kemper Street, Conference Room, Lubbock, Texas 4:00 - 6:00 p.m.

Following these hearings, DSHS will summarize and consider the impact of the public comments received. DSHS will then notify the public of the availability of a published summary of these hearings. In October of 2007, the department will prepare the final FFY 2008 Work Plan for the PHHSBG and forward it to the federal government.

Please note that DSHS will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures. Written comments regarding the PHHSBG may be submitted through September 21, 2007, to Peggy Belcher, Block Grant Coordinator, Grant Coordination & Funds Management, Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, or via email at peggy.belcher@dshs.state.tx.us. For further information, call (512) 458-7111, extension 6562.

TRD-200703706
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: August 17, 2007

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Costa Clemente Apartments) Series 2007

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Angleton Middle School, 1001 West Mulberry, Angleton, Brazoria County, Texas 77515, at 6:00 p.m. on September 20, 2007, with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $12,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Costa Clemente III, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 176-unit multifamily residential rental development to be located approximately the 1100 block of West Highway 35 and near the southeast corner of the intersection of West Highway 35 and Highway 288, Angleton, Brazoria County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200703763
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 20, 2007

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Texas Department of Insurance

Company Licensing

Application to change the name of PLAZA INSURANCE COMPANY to PLAZA INSURANCE COMPANY, INC., a foreign fire and/or casualty company. The home office is in Kansas City, Missouri.

Application to change the name of FIDELITY LIFE ASSOCIATION to FIDELITY LIFE ASSOCIATION, A LEGAL RESERVE LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Oak Brook, Illinois.

Application to change the name of KEMPER LLOYDS INSURANCE COMPANY to KEMPER INSURANCE COMPANY OF TEXAS, The company is converting from a Lloyds to a domestic fire and/or casualty company. The home office is in Austin, Texas.

Application for admission to the State of Texas by ACCIDENT INSURANCE COMPANY, INC., a foreign fire and/or casualty company. The home office is in Irmo, South Carolina.

Application for admission to the State of Texas by EMPLOYERS INSURANCE COMPANY OF NEVADA, a foreign fire and/or casualty company. The home office is in Reno, Nevada.

Application for admission to the State of Texas by UNIVERSAL PROPERTY & CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Fort Lauderdale, Florida.

Application to change the name of NEWMARKET UNDERWRITERS INSURANCE COMPANY to ALLIED WORLD NATIONAL ASSURANCE COMPANY, a foreign fire and or casualty company. The home office is in Concord, New Hampshire.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200703820
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 22, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of CRAWFORD & COMPANY, a foreign third party administrator. The home office is ATLANTA, GEORGIA.

Application to change the name of DISCOUNT SERVICES, INC. to DISCOUNT SERVICES, INC. (using the assumed name of HOMELAND HEALTHCARE), a domestic third party administrator. The home office is DALLAS, TEXAS.

Application to change the name and home office of AMERICAN WHOLEHEALTH NETWORKS, INC., WILMINGTON, DELAWARE to HEALTHWAYS WHOLEHEALTH NETWORKS, INC., a foreign third party administrator. The home office is DOVER, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200703821
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: August 22, 2007

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Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation (department) proposed amendments to 16 TAC §74.10, concerning Definitions, in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4854).

Due to an error by the Texas Register, on page 4856 incorrect text was published for §74.10(18). The corrected paragraph reads as follows:

(18) Variance, New Technology--Deferral of compliance with a requirement of the applicable ASME/ASCE Safety Codes to allow the installation of new technology if the new component, system, sub-system, function or device is found to be equivalent or superior to the standards adopted in §74.100.

The department has extended the comment period for an additional 30 days. The comment period will end on September 30, 2007.

TRD-200703823

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Texas Lottery Commission

Instant Game Number 1000 "Crocodile Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1000 is "CROCODILE CASH". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1000 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1000.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $50.00, $60.00, $200 or $1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1000 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$60.00	SIXTY
$200	TWOHUND
$1,000	ONETHOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1000 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
FIV	$5.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100 or $200.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (1000), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1000-0000001-001.

L. Pack - A pack of "CROCODILE CASH" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CROCODILE CASH" Instant Game No. 1000 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "CROCODILE CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 13 (thirteen) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to the CROC NUMBER play symbol, the player wins the PRIZE shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 13 (thirteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 13 (thirteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 13 (thirteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 13 (thirteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. There is no relation between the position of a ticket in a pack and its status (winner or non-winner).

B. Adjacent non-winning tickets within a pack will not have identical patterns. Two tickets have identical patterns if and only if they have the same symbols in the same positions.

C. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

D. The non-winning prize symbols will be unique.

E. The non-winning YOUR NUMBERS symbols will be unique.

F. At least one (1) $200 prize symbol and one (1) $1,000 prize symbol will be displayed on all tickets unless otherwise restricted by the prize structure.

G. The prize amount associated with a non-winning YOUR NUMBERS position will never have the same numerical value as the corresponding YOUR NUMBERS.

H. Non-winning prize symbols will not match winning prize symbols.

I. Winning YOUR NUMBERS positions will be distributed evenly among all possible YOUR NUMBERS positions.

2.3 Procedure for Claiming Prizes.

A. To claim a "CROCODILE CASH" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CROCODILE CASH" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CROCODILE CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CROCODILE CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "CROCODILE CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1000. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1000 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	806,400	12.50
$2	940,800	10.71
$3	100,800	100.00
$4	67,200	150.00
$5	67,200	150.00
$6	67,200	150.00
$10	33,600	300.00
$20	33,600	300.00
$30	6,720	1,500.00
$60	4,620	2,181.82
$100	1,260	8,000.00
$200	1,134	8,888.89
$1,000	210	48,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1000 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1000, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200703813

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 22, 2007

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Instant Game Number 1006 "Scary Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1006 is "SCARY MONEY". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1006 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1006.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, JACK-O-LANTERN SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $200, $2,000, or $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1006 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
JACK-O-LANTERN SYMBOL	DBL
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWOHUND
$2,000	TWOTHOU
$20,000	20THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1006 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $2,000 or $20,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (1006), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1006-0000001-001.

L. Pack - A pack of "SCARY MONEY" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B. C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SCARY MONEY" Instant Game No. 1006 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SCARY MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a Jack-o-lantern play symbol, the player wins DOUBLE the prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Adjacent non-winning tickets within a pack will not have identical patterns. Two tickets have identical patterns if and only if they have the same symbols in the same positions.

B. There will be a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

C. There will be no more than two (2) identical non-winning prize symbols.

D. The non-winning YOUR NUMBER symbols will be unique.

E. The two (2) WINNING NUMBER symbols will be unique.

F. The Jack-O-Lantern (dbl) symbol(s) will never appear as a WINNING NUMBER.

G. At least one (1) $2,000 prize and one (1) $20,000 prize symbol will be displayed on all tickets unless otherwise restricted by the prize structure.

H. The prize amount associated with a non-winning YOUR NUMBER position will never have the same numerical value as the corresponding YOUR NUMBER.

I. The Jack-O-Lantern (dbl) symbol will only appear on intended winning tickets and only as dictated by the prize structure.

J. Non-winning prize symbols will not match winning prize symbols.

K. Winning WINNING NUMBER positions will be distributed evenly among all possible WINNING NUMBER positions.

L. Winning YOUR NUMBER positions will be distributed evenly among all possible YOUR NUMBER positions.

M. On tickets that win two (2) or more times (excluding the play spots winning with a Jack-O-Lantern (dbl) symbol), each WINNING NUMBER will be used to create winners.

2.3 Procedure for Claiming Prizes.

A. To claim a "SCARY MONEY" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SCARY MONEY" Instant Game prize of $2,000 or $20,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SCARY MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SCARY MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SCARY MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1006. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1006 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	635,040	7.94
$4	352,800	14.29
$5	60,480	83.33
$10	60,480	83.33
$20	30,240	166.67
$50	24,990	201.68
$200	3,948	1,276.60
$2,000	40	126,000.00
$20,000	12	420,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.31. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1006 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1006, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200703814
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 22, 2007

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Instant Game Number 1009 "Pinball Wizard"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1009 is "$75,000 PINBALL WIZARD". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1009 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 1009.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 7X, $7.00, $10.00, $11.00, $17.00, $20.00, $27.00, $49.00, $77.00, $100, $500, $577, $1,000, $7,000 and $75,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1009 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
7X	WINX7
$7.00	SEVEN$
$10.00	TEN$
$11.00	ELEVEN
$17.00	SVNTN

$20.00	TWENTY
$27.00	TWYSVN
$49.00	FRY NIN
$77.00	SVY SVN
$100	ONE HUND
$500	FIV HUND
$577	FIVHUND77
$1,000	ONE THOU
$7,000	SVN THOU
$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1009 - 1.2E

CODE	PRIZE
SVN	$7.00
TEN	$10.00
ELV	$11.00
SVT	$17.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $7.00, $10.00, $11.00, $17.00 or $20.00.

H. Mid-Tier Prize - A prize of $27.00, $49.00, $70.00, $77.00, $100, $157 or $577.

I. High-Tier Prize - A prize of $7,000 or $75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (1009), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1009-0000001-001.

L. Pack - A pack of "$75,000 PINBALL WIZARD" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$75,000 PINBALL WIZARD" Instant Game No. 1009 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$75,000 PINBALL WIZARD" Instant Game is determined once the latex on the ticket is scratched off to expose 35 (thirty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the TARGET NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "7X" play symbol, the player wins 7 (seven) TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 35 (thirty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 35 (thirty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 35 (thirty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Adjacent non-winning tickets within a pack will not have identical patterns. Two tickets have identical patterns if and only if they have the same symbols in the same positions.

B. There will a random distribution of all symbols on the ticket unless affected by other constraints, play action or prize structure.

C. There will be no more than two (2) identical non-winning prize symbols.

D. The non-winning YOUR NUMBER symbols will be unique.

E. The five (5) TARGET NUMBER symbols will be unique.

F. The 7X symbol will never appear as a TARGET NUMBER.

G. At least one (1) $7,000 prize and one (1) $75,000 prize symbol will be displayed on all tickets unless otherwise restricted by the prize structure.

H. The prize amount associated with a non-winning YOUR NUMBER position will never have the same numerical value as the corresponding YOUR NUMBER.

I. The 7X symbol will only appear on intended winning tickets and only as directed by the prize structure.

J. Non-winning prize symbols will not match winning prize symbols.

K. Winning TARGET NUMBER positions will be distributed evenly among all possible TARGET NUMBER positions.

L. Winning YOUR NUMBER positions will be distributed evenly among all possible YOUR NUMBER positions.

M. On tickets that win two (2) or more times (excluding the play spots winning with 7X symbol), at least two (2) TARGET NUMBERS will be used to create winners.

2.3 Procedure for Claiming Prizes.

A. To claim a "$75,000 PINBALL WIZARD" Instant Game prize of $7.00, $10.00, $11.00, $17.00, $20.00, $27.00, $49.00, $70.00, $77.00, $100, $157 or $577, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $27.00, $49.00, $70.00, $77.00, $100, $157 or $577 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$75,000 PINBALL WIZARD" Instant Game prize of $7,000 or $75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$75,000 PINBALL WIZARD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$75,000 PINBALL WIZARD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$75,000 PINBALL WIZARD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 1009. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1009 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	806,400	6.25
$10	201,600	25.00
$11	134,400	37.50
$17	201,600	25.00
$20	33,600	150.00
$27	67,200	75.00
$49	58,800	85.71
$70	13,650	369.23
$77	12,600	400.00
$100	13,860	363.64
$157	2,520	2,000.00
$577	2,562	1,967.21
$7,000	28	180,000.00
$75,000	9	560,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.25. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1009 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1009, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200703815
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 22, 2007

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 13, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Southwestern Bell Telephone L.P., d/b/a AT&T Texas for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34626 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34626.

TRD-200703725
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2007

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on August 14, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34628 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-

888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34628.

TRD-200703726
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2007

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on August 14, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Inc., d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34629 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34629.

TRD-200703727
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2007

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 15, 2007, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Baldwin County Internet/DSSI Service, L.L.C. for a State-Issued Certificate of Franchise Authority, Project Number 34632 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service area includes the incorporated and unincorporated areas of Collin, Harris, Hays, Johnson, Tarrant, Travis, and Williamson Counties, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34632.

TRD-200703762
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 20, 2007

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 17, 2007, Time Warner Cable filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60670. Applicant intends to reflect a change in corporate restructuring whereby it has converted its limited partnership entity to a limited liability company.

The Application: Application of Time Warner Cable for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34646.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 6, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34646.

TRD-200703799
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2007

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On August 17, 2007, El Paso Global Networks Company filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60375. Applicant intends to relinquish its certificate.

The Application: Application of El Paso Global Networks Company to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 34640.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 6, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34640.

TRD-200703798
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2007

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 16, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of GTC Global Telecom, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 34639 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Dallas Local Access and Transport Area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than September 6, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34639.

TRD-200703771
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 21, 2007

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Notice of Petition to Reform the Agreement Relating to the Implementation of the Senate Bill 712 Weatherization Program

Notice is given to the public of a petition to reform the agreement relating to the implementation of the Senate Bill 712 Weatherization Program filed with the Public Utility Commission of Texas (commission) on July 27, 2007.

Docket Style and Number: Petition of Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy to Modify the Commission's Final Order in Docket Number 32103 and to Reform the Agreement to Implement Weatherization Programs, Docket Number 34630.

The Application: Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy seek to modify the final order of the commission issued in Docket Number 32103 and reform the agreement to implement weatherization programs. According to petitioners, if the agreement is not reformed to substitute another entity to perform the duties currently assigned to the Texas Department of Housing and Community Affairs (TDHCA), the agreement as it stands cannot be performed.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 34630.

TRD-200703728
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 17, 2007

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Public Notice of Workshop on Policy Relating to Excess Development in Competitive Renewable Energy Zones in the ERCOT Market

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding dispatch priority options for excess wind resources in the ERCOT Market on Monday, September 17, 2007, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 34577, *Proceeding to Develop Policy Relating to Excess Development in Competitive Renewable Energy Zones*, has been established for this proceeding. Ten days prior to the workshop the commission shall make available in Central Records under Project Number 34577 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Adrianne Brandt, Electric Industry Oversight Division, (512) 936-7384. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200703665
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 16, 2007

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Railroad Commission of Texas

Request for Comments on Certain Gas Services Division, License and Permit Section Forms

The Railroad Commission of Texas requests comments on certain Gas Services Division, License and Permit Section forms as part of the proposed amendments to 16 TAC §§9.26, 13.62, and 14.2031, all entitled Insurance Requirements, published in this issue of the *Texas Register.* The proposed amendments to all three rules delete requirements for endorsements and add the Acord™ form as acceptable for use with the Commission. The forms are LPG/CNG/LNG Form 996A/1996A/2996A; LPG/CNG/LNG 997A/1997A/2997A; and LPG/CNG/LNG Form 998A/1998A/2998A.. The Commission is requesting comments on the proposed amendments to the three rules, as well as these proposed form changes.

1. LPG/CNG/LNG Form 996A/1996A/2996A, Certificate of Insurance Workers' Compensation and Employers Liability or Alternative Accident/Health Insurance

RAILROAD COMMISSION OF TEXAS
Gas Services Division
License & Permit Section
Certificate of Insurance

Please indicate type of fuel
LPG__ CNG__ LNG__

Workers' Compensation and Employers Liability or Alternative Accident/Health Insurance

_____
(Name of Insurance Company; TDI No.; and NAIC No.)

Located at: _____
(Home Office Address of Insurance Company)

certifies that insurance coverage as indicated below is being provided to:

_____
(Licensee's Name as it appears on the license) (License No.)

_____
(Mailing Address of Licensee)

CHECK ONE:

_____Workers' Compensation, including Employer's Liability Insurance, is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP Gas Safety Rules (16 Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14).

_____Workers' Compensation Alternative Accident/Health Insurance is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP Gas Safety Rules (16 Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14).

Policy Number _____ is effective from _____ to _____
(Start Date) (End Date)

I declare that I am authorized to make the representations on behalf of the Insurance Company named above, and that the statements are true, correct, and complete to the best of my knowledge.

Signed at _____ on this _____ day of _____, 20___.
(County and State)

_____
Printed Name of Insurance Company

_____
Printed Name of Insurance Company's Authorized Representative

_____
Signature of Insurance Company's Authorized Representative

Return to:
Railroad Commission of Texas
Gas Services Division
License and Permit Section
PO Box 12967
Austin, TX 78711-2967

Website: www.rrc.state.tx.us
Phone (512) 463-6931
Fax (512) 463-8111

Revised August 2007 **LPG Form 996A/CNG Form 1996A/LNG Form 2996A**

2. LPG/CNG/LNG Form 997A/1997A/2997A, Certificate of Insurance Motor Vehicle, Bodily Injury, and Property Damage Liability

RAILROAD COMMISSION OF TEXAS

Gas Services Division
License & Permit Section
Certificate of Insurance
Motor Vehicle, Bodily Injury, and Property Damage Liability

Please indicate type of fuel
LPG___ CNG___ LNG___

_____
(Name of Insurance Company; TDI No.; and NAIC No.)

Located at: _____
(Home Office Address of Insurance Company)

certifies that insurance coverage as indicated below is being provided to:

_____
(Licensee's Name as it appears on the license) (License No.)

_____
(Mailing Address of Licensee)

Liability insurance is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP Gas Safety Rules (16 Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14).

Policy Number _____ is effective from _____ to _____
(Start Date) (End Date)

I declare that I am authorized to make the representations on behalf of the Insurance Company named above, and that the statements are true, correct, and complete to the best of my knowledge.

Signed at _____ on this _____ day of _____, 20___.
(County and State)

_____
Printed Name of Insurance Company

_____
Printed Name of Insurance Company's Authorized Representative

_____
Signature of Insurance Company's Authorized Representative

Return to:
Railroad Commission of Texas
Gas Services Division
License and Permit Section
PO Box 12967
Austin, TX 78711-2967

Website: www.rrc.state.tx.us
Phone (512) 463-6931
Fax (512) 463-8111

Revised August 2007 LPG 997A/CNG 1997A/LNG 2997A

3. LPG/CNG/LNG Form 998A/1998A/2998A, Certificate of Insurance General Liability

RAILROAD COMMISSION OF TEXAS
Gas Services Division
License & Permit Section

Please indicate type of fuel
LPG___ CNG___ LNG___

CERTIFICATE OF INSURANCE
GENERAL LIABILITY

_____
(Name of Insurance Company; TDI No.; and NAIC No.)

Located at: _____
(Home Office Address of Insurance Company)

certifies that insurance coverage as indicated below is being provided to:

_____
(Licensee's Name as it appears on the license) (License No.)

_____
(Mailing Address of Licensee)

General liability insurance is being provided by the insurance company named above in the amount specified in §9.26(a), Table 1, of the LP-Gas Safety Rules (Tex. Admin. Code Chapter 9); §13.62(a), Table 1, of the Regulations for Compressed Natural Gas (CNG) (16 Tex. Admin. Code Chapter 13); or §14.2031(a), Table 1, of the Regulations for Liquefied Natural Gas (LNG) (16 Tex. Admin. Code Chapter 14). **CHECK ONE:**

_____Amount stated in the policy, but not less than $25,000 per occurrence, with a $50,000 policy aggregate (LPG License Categories: D, F, I, G, L, M, N, K, P; CNG License Categories: 2, 5, 6; LNG License Categories: 30, 40, 45).

_____Amount stated in the policy, but not less than $300,000 per occurrence, with a $300,000 policy aggregate (LPG License Categories H and J).

_____Amount stated in the policy, but not less than $300,000 per occurrence, with a $300,000 policy aggregate; including completed operations and products liability coverage with a $300,000 policy aggregate (LPG License Categories: A, B, C, E, O; CNG License Categories: 1, 3, 4; LNG License Categories: 15, 20, 25, 35, 50).

Policy Number _____ is effective from _____ to _____.
(Start Date) (End Date)

Signed at _____ this _____ day of _____, 20_____.
(County and State)

_____
Printed Name of Insurance Company

_____
Printed Name of Insurance Company's Authorized Representative

_____
Signature of Insurance Company's Authorized Representative

Return to:
Railroad Commission of Texas
License and Permit Section
PO Box 12967
Austin, TX 78711-2967

Website: www.rrc.state.tx.us
Phone (512) 463-6931
Fax (512) 463-8111

Revised August 2007

LPG 998A/CNG 1998A/LNG 2998A

Comments on the proposed amendments to §§9.26, 13.62, or 14.2031, or on the proposed forms included in this notice may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication of the proposed amendments and these forms in the *Texas Register,* and encourages all interested persons to submit comments no later than this deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Richard Gilbert at (512) 463-6935. The status of all Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

Issued in Austin, Texas, on August 14, 2007.

TRD-200703645
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: August 15, 2007

♦ ♦ ♦

Texas Residential Construction Commission

Notice of Application for a Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective September 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

Section 303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application for designation as a "Texas Star Builder" of:

Wellington Manor Homes, L.P. 17480 N. Dallas Parkway, Suite 217, Dallas, Texas 75287. Wellington Manor Homes, L.P. holds TRCC builder registration #26909. The applicant's registered agent is Steve M. Burke.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, The Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200703664
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: August 16, 2007

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Texas A&M University System Board of Regents

Request for Proposal

RFP Main 07-0025

Texas A&M University seeks proposals to assess the existing state of Information Technology (IT) services provided by the Division of Finance Computing Group at the College Station campus. The project deliverables will include a detailed assessment report and a recommendations plan inclusive of estimated cost and schedule for implementation. The recommendations are intended to deploy best practices and increase the efficiency and effectiveness of IT services provided by the department. The President of Texas A&M University has affirmed the necessity to enlist the services of consultant to assess the existing state of Information Technology (IT) services provided by the Finance Division Computing Group at the College Station campus of Texas A&M University.

Information may be obtained by contacting:

Patty Winkler, CTP, C.P.M.

Senior Buyer

Strategic Sourcing & Purchasing Services

Texas A&M University

P.O. Box 30013

College Station TX 77842-3013

or e-mail at p-winkler@tamu.edu

Selection criteria will include methodology, competence, experience, knowledge, references, qualifications, and reasonableness of price. A pre-proposal meeting has been scheduled for Monday, September 10, 2007, from 9:00 a.m. - 11:00 a.m. CST in room 401 Rudder Tower on the Texas A&M University campus. Proposals must be received on or before 2:00 p.m. CST on October 1, 2007.

TRD-200703795
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University System Board of Regents
Filed: August 21, 2007

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Texas Department of Transportation

Request for Proposals - Outside Counsel

The Texas Department of Transportation (department) requests proposals from law firms interested in providing legal representation required by the department and the Texas Transportation Commission (commission) with respect to tax exempt bond matters. The legal services provided will include the customary and necessary services of a bond counsel in connection with the issuance, sale, and delivery of bonds, notes, and other public securities on which the interest is excludable from gross income under existing federal tax law. Firms responding must demonstrate a history of providing expert bond counsel services and advice for governmental agencies, with particular emphasis on experience with the financing of transportation projects. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before outside counsel may be employed.

Description: The commission has the authority under various statutes to operate several revenue bond programs. As such, the commission

and the department will need the services of outside counsel with respect to the issuance of bonds and other public securities under one or more of the following programs: Transportation Code, Chapter 227, for the development of facilities and systems on the Trans-Texas Corridor; Transportation Code, Chapter 91, for the development of state-owned rail facilities; Transportation Code, §222.003, which authorizes the issuance of bonds and other public securities secured by a pledge of and payable from revenue deposited to the credit of the state highway fund, the proceeds of which can be used to fund state highway improvement projects; Transportation Code, Chapter 228, for the development of toll projects on the state highway system; Transportation Code, Chapter 201, Subchapter M, which authorizes the issuance of bonds, notes, and other public securities secured by money in the Texas Mobility Fund, the proceeds of which can be used to fund state highway improvement projects, publicly owned toll roads, and other public transportation projects; Transportation Code, §201.115, which authorizes the commission and the department to issue notes or borrow money from any source to carry out the functions of the department; Transportation Code, Chapter 222, Subchapter D, which authorizes the commission to issue bonds to provide money for the capitalization of the State Infrastructure Bank; Transportation Code, §222.035, which requires the department to establish and administer a program for private activity bonds issued for highway facilities or surface freight transfer facilities in this state; and Transportation Code, Chapter 201, Subchapter O, which authorizes the issuance of obligations secured by money in the Texas Rail Relocation and Improvement Fund, the proceeds of which can be used to pay the costs of relocating, constructing, reconstructing, acquiring, improving, rehabilitating, or expanding publicly or privately owned rail facilities.

Scope of Services: The legal services to be provided by outside counsel may include, but are not limited to, the following tasks:

A. For new issues of bonds or other obligations, outside counsel will:

(1) Prepare or assist in preparing all orders, agreements, and other instruments pursuant to which bonds or other obligations will be authorized, secured, sold, and delivered in consultation with the commission and the department, the financial advisor, underwriters and their counsel, and other consultants;

(2) Provide recommendations on the marketing of bonds or other obligations, including by negotiated sale and/or sale by competitive bids, methods for enhancing the rating, advice on bond covenants, pledge of revenues, flow of funds, legal coverage requirements, and the timing of the issue;

(3) Provide legal advice and assistance on the requirements of various financing structures (alternatives), the principal amount of bonds or other obligations to be sold, maturity schedules, bases of awarding bids, and types of sales;

(4) Represent the commission and the department in the preparation of any contract that provides for the sale of bonds or other obligations, ensuring that all participants, including underwriters and investment banking firm(s) retained by, or contracting with, the commission and the department, disclose all conflicts of interest;

(5) Request and obtain approval of the issuance of bonds or other obligations from the Office of the Attorney General and obtain the registration of the bonds or other obligations by the Comptroller of Public Accounts of the State of Texas;

(6) Assist in making presentations and required submissions and obtaining approval of the Bond Review Board, the Legislative Budget Board, and any other State entity with supervisory powers over the issuance of bonds or other obligations by the commission;

(7) Attend meetings of the commission, Bond Review Board, legislative committees, or other meetings to the extent required or requested;

(8) Attend all document sessions;

(9) Assist in presentations to the major rating agencies, credit enhancers, or prospective purchasers of bonds or other obligations to the extent requested;

(10) Render a legal opinion concerning the validity and binding nature of the bonds or other obligations under Texas law, the tax-exempt status of the interest thereon under federal income tax laws, and the status and nature of the security for the bonds or other obligations;

(11) Prepare or review any IRS filings required by federal tax law;

(12) Render written opinions of bond counsel pertaining to investment earnings and any amounts required to be rebated to the United States as excess arbitrage earnings, if any, and any other written opinions of counsel that may be required under the terms of the order authorizing the issuance of bonds or other obligations or under the Internal Revenue Code, as amended;

(13) Prepare or assist in the preparation of the Preliminary Official Statement, the Final Official Statement, or the Offering Memorandum, as applicable, for each sale, including review of the information therein describing the bonds or other obligations, the security therefore, and the federal income tax status thereof, with the understanding that bond counsel will not be expected to independently verify other data contained in the Official Statement or Offering Memorandum and that the Official Statement or Offering Memorandum may so state;

(14) Prepare certain certificates and review such other documents as are customary and necessary in order to structure and issue bonds or other obligations;

(15) Provide advice and counsel on continuing compliance with laws applicable to the issuance of bonds and other public securities, including ongoing disclosure obligations;

(16) Supervise the printing, if any, execution, and delivery of the bonds or other obligations to the purchasers, and the printing and binding of the bond transcripts and, if requested, the Offering Memorandum or the Preliminary Official Statement and the Final Official Statement;

(17) After issuance, interpret bond provisions and covenants when requested; and

(18) Provide legal support for all other matters necessary or incidental to the issuance of the bonds or other obligations.

B. Outside counsel will advise the commission and the department on the legality of proposed debt restructuring techniques.

C. Outside counsel will advise the commission and the department on legal ramifications and constraints of proposed investment transactions and the development of investment contracts and investment policies.

D. Outside counsel will advise the department on federal tax laws, especially those pertaining to federal arbitrage/rebate tax laws. It will, if requested, review and "sign off" on all calculations and methodologies undertaken by department staff and outside specialists.

E. In response to real or anticipated changes in state and federal law, regulation, or public policy, outside counsel will advise the commission and the department of the impact on bond issues and investment policy. Outside counsel shall review legislation, recommend legislative action where appropriate, and assist with drafting of legislation at both the federal and state level.

F. Outside counsel will assist in the solicitation and evaluation of proposals for public/private development of transportation projects under

comprehensive development agreements and review the proposed financing plans. Outside counsel will report on the conformance of the plans with federal and state securities laws. Outside counsel will assist with the writing of all other legal documents and public notices relating to a comprehensive development agreement and assist with writing and filing all legal documents required of a public/private partnership financing by all jurisdictional governmental entities.

G. Outside counsel will assist in reviewing and commenting on agreements with the Federal Highway Administration and with political subdivisions relating to the financing of projects.

H. Outside counsel will assist in writing, issuing, soliciting, and evaluating Requests for Proposals for underwriting services, and prepare recommendations on retention of underwriters and underwriting teams.

I. Outside counsel will provide information on questions and issues posed by the commission and the department on an ad hoc basis.

Form of Response: Responses to this Request for Proposals (RFP) should include at least the following information:

A. Provide a brief history and general description of the firm, including the number of years the firm has been active in rendering bond opinions for governmental issuers. Describe how the firm is organized and how its resources will be put to work for the commission and the department. Include information relative to the capabilities and resources of its Texas offices and a listing of its Texas office resident personnel by discipline that would be assigned to department projects. Provide a synopsis of the firm's experience in providing bond counsel services to governmental issuers of tax-exempt revenue bonds, with particular attention being given to transportation project financings.

B. Qualifications.

(1) List the governmental issues for which the firm served as lead bond counsel, co-bond counsel, underwriters' counsel, or special tax counsel in the past five years. Include the name of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Indicate any issues for transportation projects. Specify for each issue the involvement, if any, of the attorneys who may be assigned to department projects. Tabular format is acceptable.

(2) Select **one** transaction from the above list that best demonstrates the firm's ability to serve the commission and the department and describe in detail the legal issues involved in the transaction and the firm's approach to the analysis. (Two page limit.)

(3) Describe any innovations the firm has developed or worked on for tax-exempt security issues, briefly describing the problem, the solution and the results.

(4) Outline the firm's experience during the past two years with the major rating agencies and note its potential applicability to the commission and the department.

(5) Describe the firm's expertise and experience in assisting public finance clients in creating new financing programs.

(6) Describe the firm's capabilities in assisting public finance clients in complying with arbitrage regulations and other tax-related requirements. Include a brief description of the firm's experience in securing private letter rulings or other rulings (other than extensions of time or other procedural matters) from the Internal Revenue Service on behalf of any public finance clients, including a representative description of the types of rulings.

(7) Describe the firm's experience with bond enhancement agreements and derivative products in bond transactions.

C. Provide resumes for those individuals who would be assigned to work on department projects, including years of bond counsel experience and number and type of bond issues. Specify who would be assigned as the primary day-to-day contact.

D. Describe efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services generally and bond matters in particular.

E. Identify each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the department or to the State of Texas or any of its agencies. Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address any conflicts of interest.

F. Confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Information submitted in response to this RFP shall not be released by the department during the proposal evaluation process or prior to contract execution. Following execution of a contract, all proposals and the information contained therein may be subject to public disclosure under the Texas Public Information Act.

Term of the Agreement: It is anticipated that the initial contract term will be for the period November 1, 2007 through October 31, 2008, renewable at the department's option for an additional twelve months. However, the department reserves the right to shorten the term of the agreement or to make other modifications to the contract as may be required by the Office of the Attorney General. The department retains the right to negotiate all elements of the contract for legal services and to terminate the contract, for any reason, subject to prior written notice. In the event of termination, outside counsel will be paid for all services completed to the effective date of termination plus any necessary services to effectively conclude and transfer ongoing work.

Format and Person to Contact: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11-inch paper with all pages sequentially numbered and either stapled or bound together. Proposals should be limited to a maximum of 30 pages. The proposal must be executed by a duly authorized representative of the law firm. All proposals become the property of the department. The proposal should be sent by mail or delivered in person, marked "Response to Request for Proposal," and addressed to General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, contact Angie Parker in the Office of General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, no later than 5:00 p.m. on September 28, 2007. The department has the sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of the department to do so.

Any proposal may be modified or withdrawn, even after the proposal is received by the department, at any time prior to the proposal due date. No material changes will be allowed following the proposal due date; however, non-substantive corrections or deletions may be made with the approval of the department.

Basis of Selection: The department will make its selection based on an evaluation of the firm's demonstrated qualifications, expertise, experience, and competence in providing bond counsel services and advice to governmental agencies, particularly with respect to transportation projects, the expertise of the attorneys that will be assigned to work on such matters, and the capabilities and resources of the firm's offices. Additionally, the department may, at its option, conduct interviews as

part of the selection process. Specific evaluation criteria include the following:

A. The completeness and thoroughness of a firm's response relative to information requested in the RFP;

B. The extent and depth of the firm's qualifications, expertise, experience, reputation, and record of success in providing bond counsel services to governmental entities issuing tax exempt bonds, particularly with respect to transportation projects, including the size and number of prior bond issues and experience in complex bond financings;

C. The extent and depth of the qualifications, experience, reputation, and record of success of the attorneys that will be assigned to provide bond counsel services, particularly with respect to transportation projects; and

D. The extent to which the firm is organizationally structured to carry out the responsibilities potentially assigned to it and the effectiveness of the resources that will be assigned to the department.

Fees may not be considered and may not be indicated in responses to this RFP. The department will attempt to negotiate a contract at a fair and reasonable price with the firm(s) deemed to be the most highly qualified. If a satisfactory contract cannot be negotiated, the department reserves the right to proceed with another firm.

Issuance of this RFP in no way constitutes a commitment by the department to award a contract or to pay for any expenses incurred either in the preparation of a response to this RFP or in the production of a contract for legal services. All costs directly or indirectly related to preparation of a response to this RFP, or any oral presentation or supplement that may be required by the department, shall be borne by the responding firm.

TRD-200703772

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: August 21, 2007

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).